

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-7024

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RICHARD VOIGHT and
DICK VOIGHT BUICK, INC.,

Plaintiffs-Appellants,

vs.

GENERAL MOTORS CORPORATION,
MOTORS HOLDING DIVISION,
GENERAL MOTORS CORPORATION;
BUICK MOTOR DIVISION,
GENERAL MOTORS CORPORATION;
GENERAL MOTORS ACCEPTANCE CORPORATION,
ARGONAUT DIVISION, GENERAL MOTORS CORPORATION;
MARINE MIDLAND BANK, EDWARD HIGGINS,
HARRY FORNOROLA, WILLIAM MONRIAN,

Defendants

and

MARINE MIDLAND BANK, HARRY FORNOROLA and
WILLIAM MONRIAN,

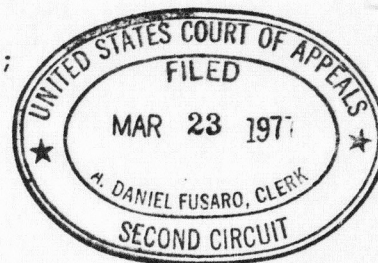
Defendants-Appellees.

NATURE OF PROCEEDINGS: APPEAL

COURT BELOW: UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

APPENDIX

DOCKET #77-7024



Bp/s

ROBERT F. WOOD, P.C.
Robert F. Wood, Esq.
Attorneys for Plaintiffs
Office & P.O. Address
800 Powers Building
Rochester, New York 14614
(716) 454-4073

PAGINATION AS IN ORIGINAL COPY

APPENDIX
TABLE OF CONTENTS

	<u>Page</u>
Plaintiffs' Complaint, Interrogatories and Notice to Produce Documents..... (Record on Appeal #1)	1
Order to Show Cause..... (Record on Appeal #20)	74
Affidavit of John R. Friedlander, Esq., in Opposition to Marine Midland Defendants' Motion to Dismiss.... (Record on Appeal #22-A)	83
Reply Affidavit of Kenneth Payment, Esq. on behalf of Marine Midland Defendants..... (Record on Appeal #23)	91
Decision of Judge Burke Dismissing Complaint against Marine Midland Defendants and Edward Higgins..... (Record on Appeal #26)	93
Order Dismissing Complaint, with prejudice, against Defendants Marine Midland, William Monrian, Edward Higgins and Harry Fornorola..... (Record on Appeal #27)	97
Decision of Judge Burke directing entry of Judgment Dismissing Complaint against Marine Midland, William Monrian and Harry Fornorola..... (Record on Appeal #28)	98
Letter of Judge Burke to Clerk correcting erroneous dismissal of Defendant Higgins..... (Record on Appeal #29)	100
Corrected Judgment Dismissing Complaint with prejudice against Defendants Marine Midland, William Monrian and Harry Fornorola..... (Record on Appeal #30)	101

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF NEW YORK

3 RICHARD VOIGHT,
4 DICK VOIGHT BUICK, INC.,

5 Plaintiffs,

COMPLAINT

6 -vs-

JURY TRIAL
DEMANDED

7 GENERAL MOTORS CORPORATION,
8 MOTORS HOLDING DIVISION, GENERAL MOTORS CORPORATION;
9 BUICK MOTOR DIVISION, GENERAL MOTORS CORPORATION;
10 GENERAL MOTORS ACCEPTANCE CORPORATION,
11 ARGONAUT DIVISION, GENERAL MOTORS CORPORATION;
12 MARINE MIDLAND BANK, WILLIAM MONRIAN,
13 EDWARD HIGGINS, HARRY FORNOROLA,

CIVIL ACTION
NO. 76-187

14 Defendants.

15 Plaintiffs by their attorneys, ROBERT F. WOOD, P.C., for
16 their Complaint against the Defendants and each of them, allege
17 herein as follows:

18 JURISDICTION
19 VENUE

20 This action arises under and as a result of violations
21 of certain Federal Statutes by the Defendants above named. Said
22 Statutes are commonly known as the Sherman Anti-Trust Act, Clayton
23 Anti-Trust Act, Automobile Dealer Day In Court Act.

24 This Court also has pendent jurisdiction over the several
25 non-filed common law and statutory claims alleged herein. This is
26 an action to recover money damages, compensatory and punitive,
27 as well as treble damages for violations of the Sherman and Clayton
28 Anti-Trust Acts.

The Acts complained of herein were committed by the
several Defendants, acting jointly and severally, and were committed
within this District, as well as in interstate commerce.

PARTIES

1
2
3 1. That Plaintiff, RICHARD VOIGHT, was at most of the
4 times herein mentioned, and still is, a resident of the State of
5 New York and of this District. Prior to moving to New York State,
6 Plaintiff, RICHARD VOIGHT, was a resident of the State of Illinois.

7 2. That Plaintiff, DICK VOIGHT BUICK, INC., was at all
8 times herein mentioned, and still is, a Delaware corporation
9 organized and existing under and pursuant to the laws of the State
10 of Delaware with its principal place of business located at 3800
11 Ridge Road West, Town of Greece, County of Monroe and State of
12 New York.

13 3. That Plaintiff, RICHARD VOIGHT, was at all times
14 herein mentioned, while in New York, an automobile dealer, within
15 the meaning of that term as used in the Dealer Day In Court Act,
16 15 U.S.C. Section 1221, 1222, et seq., as amended, and within the
17 meaning of Section 197, General Business Law of the State of New
18 York, and was the dealer at DICK VOIGHT BUICK, INC.

19 4. That prior to Plaintiff RICHARD VOIGHT'S moving to
20 Rochester, New York, Plaintiff had been employed in various aspects
21 of the automobile retail business in and around Chicago, Illinois,
22 and had been recognized by GENERAL MOTORS CORPORATION and others for
23 his outstanding performance in selling of Buick automobiles, parts
24 and accessories, as well as in operating, running and managing an
25 automobile dealership.

26 5. That during most of the period of time herein mentioned,
27 Plaintiff, RICHARD VOIGHT, ran, operated and managed DICK VOIGHT
28 BUICK, INC., successfully generated profits and was recognized by
Defendant, GENERAL MOTORS CORPORATION and its BUICK MOTOR DIVISION,

1 and others, for his achievements and success.

2 6. That Defendant, GENERAL MOTORS CORPORATION, (herein-
3 after referred to as "GMC") is a Delaware corporation, with its
4 principal place of business in the State of Michigan. At all
5 times herein mentioned, Defendant GMC was engaged in, and still
6 engages in, the manufacture, sale, financing and distribution of
7 motor vehicles and automotive parts and accessories, including
8 "BUICK" motor vehicles, parts and accessories, in the various
9 states of the United States and particularly in the area of the
10 City of Rochester, County of Monroe and State of New York. At
11 all times herein mentioned, Defendant, GMC was and is an "auto-
12 mobile manufacturer" as defined in the Dealer Day In Court Act
13 (15 U.S.C. Section 1221 et seq.), and as well as in Section 197
14 et seq., General Business Law of the State of New York.

15 7. That various activities of Defendant GMC are handled
16 through several subsidiary divisions or corporations:

17 (a) Defendant, GENERAL MOTORS CORPORATION (BUICK
18 MOTOR DIVISION), (hereinafter referred to as "BUICK") is
19 a wholly-owned subsidiary or division of Defendant GMC.
20 Defendant BUICK is, and at all times relevant hereto has
21 been, engaged in the business of executing franchise
22 agreements with motor vehicle retail dealers and of sell-
23 ing to such dealers in interstate commerce motor vehicles
24 manufactured by GENERAL MOTORS CORPORATION and parts and
25 accessories therefor.

26 (b) Defendant, GENERAL MOTORS CORPORATION (MOTORS
27 HOLDING CORPORATION), (hereinafter referred to as "MOTORS
28 HOLDING") is a wholly-owned subsidiary or division of

1 Defendant GMC and, at all times herein mentioned,
2 Defendant MOTORS HOLDING acted for Defendant GMC, as well
3 as for itself while engaging in interstate commerce in
4 the business of financing, developing, owning, managing,
5 and administrating certain franchised dealers of Defendants
6 GMC and BUICK throughout the various states of the
7 United States, including New York.

8 (c) Defendant, GENERAL MOTORS ACCEPTANCE CORPORATION,
9 (hereinafter referred to as "GMAC"), is a Delaware
10 corporation with its principal place of business in the
11 State of Michigan and is a wholly-owned subsidiary of
12 Defendant GMC. Defendant GMC is and at all times relevant
13 hereto has been engaged in interstate commerce in the
14 business of financing the wholesale and retail purchase
15 and sale of motor vehicles manufactured by the Defendant
16 GMC, as well as being involved in other financial arrange-
17 ments with GMC dealers.

18 (d) Defendant GENERAL MOTORS CORPORATION, (ARGONAUT
19 DIVISION), hereinafter referred to as "ARGONAUT" is a
20 wholly-owned subsidiary or division of Defendant GENERAL
21 MOTORS CORPORATION. Defendant, ARGONAUT, at all times
22 relevant hereto has been engaged in the business of pre-
23 paring, recommending and/or drawing plans and specifica-
24 tions for dealership facilities and physical plants for
25 GENERAL MOTORS dealers, including Plaintiffs herein.

26 (e) Defendants BUICK, MOTORS HOLDING and GMAC are
27 each and all "automobile manufacturers" as that term is
28 defined in the Good Faith Act (15 U.S.C. Section 1221

4

1 et seq.).

2 8. That at all times herein mentioned, the MOTORS HOLD-
3 ING DIVISION was, and still is, used by Defendant, GENERAL MOTORS
4 CORPORATION, as a method of supplying capital for the express
5 purpose of establishing new automobile dealerships in markets
6 throughout the United States where Defendant, GENERAL MOTORS
7 CORPORATION, had not previously been represented to their satis-
8 faction.

9 9. That Defendant, GENERAL MOTORS CORPORATION, and its
10 various Divisions herein named, were at all times herein mentioned,
11 and still are, engaged in the business of executing franchise
12 and sales agreements with motor vehicle retail dealers in the
13 various states of the United States, including New York State,
14 and Defendant, GENERAL MOTORS CORPORATION, is in the business of
15 selling and distributing to such dealers in interstate commerce,
16 motor vehicles manufactured by Defendant, GENERAL MOTORS CORPORATION,
17 and/or the BUICK MOTOR DIVISION, as well as parts and accessories
18 therefor.

19 10. That Defendant, GENERAL MOTORS CORPORATION, and its
20 various Divisions herein named were at all times mentioned, and
21 still are, authorized to do business in, and actually do business
22 in, the State of New York.

23 11. That Defendant, MARINE MIDLAND BANK, was at all times
24 herein mentioned, a domestic corporation, a national bank chartered
25 to engage in various aspects of the banking business and did and
26 does, in fact, engage in said banking business in New York State,
27 with its principal place of business located in Buffalo, New York.
28

1 12. That Defendants WILLIAM MONRIAN and HARRY FORNOROLA
2 were at all times herein mentioned, residents of the State of New
3 York and of this District, officers of Defendant, MARINE MIDLAND
4 BANK, and were loan officers of said Bank who initiated, processed
5 and/or controlled many of the financial transactions and dealings
6 between Plaintiffs, Defendants, GENERAL MOTORS CORPORATION and
7 its Divisions, and Defendant, MARINE MIDLAND BANK.

8 13. That during most of the times herein mentioned, the
9 Defendant EDWARD HIGGINS was a resident of the County of Erie,
10 State of New York, an agent and employee of Defendant, GENERAL
11 MOTORS CORPORATION (MOTORS HOLDING DIVISION) and was a director
12 of Plaintiff, DICK VOIGHT BUICK, INC.

13 14. That from the time that Plaintiff, DICK VOIGHT BUICK,
14 INC., was first organized, it was organized in such a manner that
15 Plaintiff, RICHARD VOIGHT, was the owner and holder of the Common
16 Stock, Class B and Preferred Stock, Class B, of said dealership
17 corporation, with GENERAL MOTORS CORPORATION and/or its MOTORS
18 HOLDING DIVISION being the owners and holders of the Common and Pre-
19 ferred Stock, Class A, of said dealership corporation. That
20 pursuant to a specific plan, the Plaintiff, RICHARD VOIGHT, was
21 required to purchase and retire the Common Stock, Class A, of
22 Defendants, GENERAL MOTORS CORPORATION and its Divisions out of
23 his bonus and profits realized from the operation of DICK VOIGHT
24 BUICK, INC., and subsequently Preferred Stock, Class A.

25 15. That each of the acts, conduct, promises, representa-
26 tions and warranties of Defendants herein were performed, and have
27 been performed and carried out by said Defendants jointly and
28 severally, and were authorized, ratified, ordered, directed,

1 performed or carried out by said Defendants and their agents,
2 officers, employees and representatives while actively engaged in
3 the management of each of the above-named Defendants.

4 COUNT I

5 16. That Plaintiffs repeat, reallege and reiterate
6 Paragraphs "1-10" and "14" and "15" herein and make the following
7 allegations against Defendants GENERAL MOTORS CORPORATION, MOTORS
8 HOLDING DIVISION, BUICK MOTOR DIVISION and THE ARGONAUT DIVISION
9 of GENERAL MOTORS CORPORATION, (Defendant GENERAL MOTORS CORPORA-
10 TION and its various Divisions named herein are hereinafter
11 referred to collectively as Defendants GENERAL MOTORS.)

12 17. That prior to the time that Plaintiff RICHARD VOIGHT
13 moved and relocated to Rochester, New York, Plaintiff RICHARD
14 VOIGHT had been actively engaged in the automobile retail business
15 for GENERAL MOTORS CORPORATION dealers in and around Chicago,
16 Illinois and had become thoroughly familiar with all aspects of
17 operating, running and managing a new car dealership, and had
18 proven his success in doing so on more than one occasion.

19 18. That on at least one occasion, at the specific
20 request of Defendant GENERAL MOTORS CORPORATION and BUICK MOTOR
21 DIVISION, Plaintiff assumed the responsibility for the operation
22 and management of SUBURBAN BUICK in Wheaton, Illinois, at a time
23 when said dealership was a loss dealership, and Plaintiff was
24 responsible for making the dealership a profitable operation.

25 19. That in or about early January, 1966, Plaintiff (who
26 had never resided or worked in or around Rochester, New York prior
27 thereto) was desirous of becoming a Buick Dealer in and around
28 Chicago, Illinois and became interested in a dealership in Mount

1 Prospect, Illinois, but said dealership was given to another
2 dealer by Defendants GENERAL MOTORS.

3 20. That in or about the same period of time (1966),
4 Defendants GENERAL MOTORS contacted Plaintiff RICHARD VOIGHT from
5 Van Nuys, California. As a result of specific requests of Defen-
6 dants GENERAL MOTORS, Plaintiff RICHARD VOIGHT made several trips
7 to California for the express purpose of reviewing and examining
8 a BUICK dealership for the express purpose of becoming a BUICK
9 dealer in California.

10 21. That in or about February, 1967, at the same time
11 that Plaintiff was in the process of evaluating the California
12 BUICK dealership, and at a time when Plaintiff RICHARD VOIGHT had
13 decided to become a BUICK dealer in California, Defendants
14 GENERAL MOTORS informed Plaintiff about an open point in the Town
15 of Greece, County of Monroe, State of New York, and expressly
16 informed and represented to Plaintiff RICHARD VOIGHT that the
17 dealership point in Greece, New York was a better sales area and
18 provided far more potential for future growth than the Van Nuys,
19 California dealership.

20 22. That at the express insistence of Defendants GENERAL
21 MOTORS and that of GENERAL MOTORS' agents, officers, employees or
22 representatives, Plaintiff RICHARD VOIGHT traveled to the Buffalo
23 Zone Office of BUICK, met with GENERAL MOTORS' representatives
24 who reviewed market surveys of the Rochester market with Plaintiff
25 RICHARD VOIGHT, as well as other aspects of the Rochester metro
26 market with Plaintiff RICHARD VOIGHT.

27 23. That as part of the negotiations between Plaintiff
28 RICHARD VOIGHT and Defendants GENERAL MOTORS, Defendants GENERAL

1 MOTORS and/or their agents, officers, employees, or representatives
2 made the following promises, representations and warranties to
3 Plaintiff RICHARD VOIGHT:

4 A. That Plaintiff RICHARD VOIGHT would become a very
5 successful BUICK dealer in the Greece, New York dealership
6 location.

7 B. That Plaintiff RICHARD VOIGHT would become far
8 more successful as a BUICK dealer in the Greece, New York
9 location than he would have been at the California dealer-
10 ship location.

11 C. That Plaintiff RICHARD VOIGHT would make sub-
12 stantial profits at the Greece, New York dealership
13 location.

14 D. That Plaintiff RICHARD VOIGHT would make a sub-
15 stantial return on his investment in the dealership at the
16 Greece, New York dealership location.

17 E. That Defendants GENERAL MOTORS would select a
18 dealership location in Greece, New York that would be the
19 the best possible dealership location that would be in
20 Plaintiff's best interests, namely on Ridge Road West and
21 at no other location.

22 F. That Defendants GENERAL MOTORS would provide and
23 recommend dealership facility construction plans which
24 would provide the best possible dealership facilities for
25 Plaintiffs, which would be in Plaintiff's best interests.

26 G. That Defendants GENERAL MOTORS, in selecting
27 Greece, New York, and the actual location on Ridge Road
28 West as the new dealership location had selected a "prime"

1 location and that it was a location and sales area that
2 would generate substantial profits for Plaintiff.

3 H. That Defendants GENERAL MOTORS would help and
4 assist Plaintiff RICHARD VOIGHT in becoming a successful
5 and profitable BUICK dealer in Greece, New York.

6 I. That Defendants GENERAL MOTORS would help and
7 assist Plaintiff RICHARD VOIGHT in raising the required
8 capital to build the dealership facility, buy the land
9 and open up the dealership for business.

10 J. That Defendants GENERAL MOTORS would recommend
11 capitalization and/or working capital figures and computa-
12 tions upon which Plaintiff RICHARD VOIGHT could rely.

13 K. That Plaintiff RICHARD VOIGHT could rely upon the
14 market surveys shown to Plaintiff at the outset.

15 L. That in becoming involved with MOTORS HOLDING
16 DIVISION, Plaintiff RICHARD VOIGHT would have many advan-
17 tages and the benefit of expert staff personnel of the
18 MOTORS HOLDING DIVISION who would help and assist Plain-
19 tiffs in the event that Plaintiff encountered problems in
20 the dealership.

21 M. That even though two of the three directors of
22 DICK VOIGHT BUICK, INC. would be, at all times, agents,
23 officers, employees and representatives of Defendant
24 GENERAL MOTORS CORPORATION, and would, therefore, have a
25 majority vote on the Board of Directors of DICK VOIGHT
26 BUICK, INC., said agents, officers, employees and repre-
27 sentatives of Defendant GENERAL MOTORS CORPORATION would
28 not ever vote as directors of DICK VOIGHT BUICK, INC., or

1 take or fail to take any other actions in any manner con-
2 trary to the best interests of Plaintiffs.

3 N. That Plaintiff RICHARD VOIGHT would be the BUICK
4 dealer at DICK VOIGHT BUICK, INC. and that Plaintiff
5 RICHARD VOIGHT would be given a "free" hand to run, operate
6 and manage said dealership as the dealer and that Plaintiff
7 RICHARD VOIGHT would have all of the various benefits
8 of being a BUICK dealer in the United States.

9 O. That by moving and relocating his entire business
10 and personal life from the Metropolitan Chicago area to
11 Greece, New York, Plaintiff RICHARD VOIGHT was making a
12 move of a permanent nature and that Plaintiff RICHARD
13 VOIGHT was investing his capital in a business venture
14 which would continue for the remainder of the work-life
15 expectancy of Plaintiff, as well as for Plaintiff RICHARD
16 VOIGHT'S retirement and that of his wife, BEVERLY VOIGHT.

17 P. That Defendants GENERAL MOTORS and their agents,
18 officers, employees or representatives would not at any
19 time interfere with Plaintiff RICHARD VOIGHT'S decisions
20 as a BUICK dealer and would not interfere with Plaintiff
21 RICHARD VOIGHT'S operation and management of the dealership.

22 Q. That Defendants GENERAL MOTORS and their agents,
23 officers, employees and representatives were acting in
24 good faith at all times and would continue to so act during
25 the entire course of time that Plaintiff RICHARD VOIGHT
26 would be a BUICK dealer.

27 R. That the business and franchising transactions
28 between Plaintiffs and Defendants GENERAL MOTORS were of a

1 permanent nature and that Defendants GENERAL MOTORS were
2 looking forward to having Plaintiff RICHARD VOIGHT as a
3 BUICK dealer for many years to come.

4 S. That Defendants GENERAL MOTORS and their agents,
5 officers, employees and representatives would recommend
6 overhead guidelines and other guidelines upon which
7 Plaintiff RICHARD VOIGHT could rely in the opening of
8 and running of his dealership.

9 T. That if ever necessary, GENERAL MOTORS ACCEPTANCE
10 CORPORATION would provide wholesale financing for the
11 purpose of financing the purchase of new vehicles for resale
12 to customers.

13 U. That in selecting the Ridge Road West site for
14 DICK VOIGHT BUICK, INC., Defendants GENERAL MOTORS had
15 selected the best dealership location.

16 V. That Defendants GENERAL MOTORS would sell and
17 ship new vehicles, parts and accessories to Plaintiff in
18 such amounts and in the types and models that would best
19 suit the needs and desires of Plaintiff in the market place.

20 W. That Defendants GENERAL MOTORS would reimburse
21 Plaintiff RICHARD VOIGHT for any and all travel and other
22 expenses incurred by Plaintiff in traveling to and from
23 Greece, New York - Chicago, Illinois during the period of
24 time that the dealership facility was being constructed.

25 X. That by investing his personal capital in the
26 real estate and the dealership facility, Plaintiff RICHARD
27 VOIGHT was providing himself with a safe and secure
28 investment for his future.

1 - Y. That Plaintiff RICHARD VOIGHT would have no
2 problems acquiring and/or buying out the investment of
3 and/or the interests of MOTORS HOLDING DIVISION IN DICK
4 VOIGHT BUICK, INC.

5 Z. That Plaintiff RICHARD VOIGHT would be permitted,
6 if he chose to do so, to buy the interests of MOTORS
7 HOLDING DIVISION in DICK VOIGHT BUICK, INC. in one lump
8 sum, and that Defendants GENERAL MOTORS would approve such
9 a purchase.

10 AA. That there were other promises, representations,
11 and warranties made by Defendants and their agents, officers,
12 employees and representatives in order to induce Plaintiff
13 RICHARD VOIGHT to enter into negotiations with Defendants
14 GENERAL MOTORS, to quit his then existing employment, to
15 refrain from becoming a BUICK dealer in California, to
16 move his entire personal and business life from Chicago to
17 Rochester, to invest substantial amounts of money in the
18 dealership and to otherwise change and alter his position,
19 all to his eventual detriment.

20 24. That as a result of the aforesaid negotiations and
21 promises, representations and warranties, Plaintiff RICHARD VOIGHT
22 formed and/or caused to be formed the dealership corporation called
23 DICK VOIGHT BUICK, INC.; Plaintiff RICHARD VOIGHT entered into a
24 series of contracts and agreements with the Defendant GENERAL
25 MOTORS CORPORATION and the various divisions named hereinabove;
26 Plaintiff RICHARD VOIGHT moved from Chicago to Rochester; Plaintiff
27 refrained from becoming the BUICK dealer in California where he had
28 already made the decision to become a BUICK dealer at the time of

1 the aforementioned promises, representations and warranties;
2 Plaintiff RICHARD VOIGHT became the BUICK dealer at 3800 Ridge Road
3 West, Town of Greece, County of Monroe and State of New York.
4 Plaintiffs entered into a series of financial arrangements and
5 agreements with Defendants MARINE MIDLAND BANK and Plaintiffs did
6 other acts and/or refrained from doing certain acts all to their
7 detriment.

8 25. That the aforementioned promises, representations
9 and warranties made by Defendant GENERAL MOTORS and their agents,
10 officers, employees and representatives to Plaintiff RICHARD VOIGHT
11 were false and fraudulent when made and said Defendants GENERAL
12 MOTORS and their agents, officers, employees and representatives
13 never intended that they would be carried out or fulfilled but,
14 rather in truth and in fact, Defendants GENERAL MOTORS and their
15 agents, officers, employees and representatives always intended to
16 act only for their own benefit and profit and none of the promises,
17 representations and warranties as made to Plaintiff RICHARD VOIGHT
18 at the outset of the franchise relationship was true.

19 26. That when Defendants GENERAL MOTORS and their agents,
20 officers, employees and representatives made the aforesaid promises,
21 representations and warranties, said Defendants knew them to be
22 false and fraudulent and said promises, representations and
23 warranties were made to Plaintiff RICHARD VOIGHT with the intent
24 to deceive and defraud Plaintiff and to induce him to change and
25 alter his position, all to his detriment.

26 27. That because of and by virtue of the disparity in
27 the bargaining positions of the parties and the great knowledge
28 which Defendants GENERAL MOTORS and their agents, officers,

1 employees or representatives possessed at all times herein, said
2 Defendants GENERAL MOTORS and their agents, officers, employees
3 and representatives had a duty to disclose the truth and/or all
4 material facts to Plaintiff RICHARD VOIGHT and said Defendants
5 GENERAL MOTORS had a duty to deal with and treat Plaintiffs
6 honestly and fairly.

7 28. That Plaintiffs, at the time said promises, repre-
8 sentations and warranties were made as aforesaid, did not know the
9 truth regarding them, but believed them to be true and relied upon
10 them and had a right to rely upon them.

11 29. That Plaintiffs would not have acted as aforesaid
12 except for their reliance upon said promises, representations and
13 warranties of Defendants GENERAL MOTORS and their agents, officers,
14 employees and representatives.

15 30. That Plaintiffs did not discover the truth with
16 regard to the aforementioned promises, representations and
17 warranties and the fraudulent course of conduct to which Plaintiffs
18 were subjected until in or about 1975.

19 31. That as a result of all of the foregoing, Plaintiffs
20 have suffered great damage and injury as more particularly herein-
21 after alleged.

22 COUNT II

23 32. That Plaintiffs repeat, reallege and reiterate
24 Paragraphs "1-10" and "14" and "15", "16-31" and make these
25 allegations against Defendants GENERAL MOTORS and their agents,
26 officers, employees and representatives.

27 33. That at all times herein mentioned, Plaintiffs
28 faithfully performed their obligations as they were required to

1 do, pursuant to the several verbal and written agreements and
2 understandings, express and implied, between Plaintiffs and said
3 Defendants.

4 34. That Defendants named hereinabove breached the
5 several agreements, understandings and promises made to Plaintiffs
6 as alleged herein.

7 35. That as a result of all of the foregoing, Plaintiffs
8 have suffered great damage and injury, all as more particularly
9 hereinafter set forth.

10 COUNT III

11 36. That Plaintiffs repeat, reallege and reiterate
12 Paragraphs "1-15" and make these allegations against all of the
13 Defendants above named, their agents, officers, employees and
14 representatives.

15 37. That at the time that Plaintiff RICHARD VOIGHT had
16 made the decision to become a BUICK dealer in Greece, New York
17 and to do other acts alleged herein, Defendants GENERAL MOTORS
18 and their agents, officers, employees and representatives intro-
19 duced Plaintiff RICHARD VOIGHT to Defendant MARINE MIDLAND BANK
20 for the purpose of having Defendant MARINE MIDLAND BANK handle
21 various financial matters of Plaintiffs, including, but not
22 limited to, new vehicle floor plan and mortgaging Plaintiffs'
23 dealership facilities. Plaintiff RICHARD VOIGHT and his wife were
24 also induced to enter into personal financial arrangements with
25 Defendant MARINE MIDLAND BANK.

26 38. That numerous promises, representations and
27 warranties were made to Plaintiffs by Defendants MARINE MIDLAND
28

1 BANK, MONRIAN, FORNOROLA, and other agents, officers, employees and
2 representatives of Defendant MARINE MIDLAND BANK, all with the com-
3 plete knowledge, consent and approval of Defendants GENERAL MOTORS,
4 in order to induce Plaintiffs to deal exclusively with Defendant
5 MARINE MIDLAND BANK to enter into financing and business relation-
6 ships with Defendant MARINE MIDLAND BANK. That among said
7 promises, representations and warranties were the following:

8 A. That the amount of original capitalization
9 being proposed and approved by said Defendants was
10 adequate and sufficient to run and operate a new
11 Buick dealership;

12 B. That the amount of original capitalization
13 being proposed and approved by said Defendants was
14 adequate and sufficient to open up a new Buick dealer-
15 ship;

16 C. That the method by which said Defendants
17 recommended to Plaintiffs that Plaintiffs borrow and
18 raise the necessary capital was proper and based upon
19 sound financial advice;

20 D. That Defendant MARINE MIDLAND BANK would treat
21 Plaintiffs fairly during all of their business and
22 personal dealings at all times;

23 E. That Defendant MARINE MIDLAND BANK would at
24 all times provide professional, competent and sound
25 banking and financial advice and services;

26 F. That Defendants, and especially Defendant
27 MARINE MIDLAND BANK and the individual Defendants named
28

1 herein, would properly handle and service Plaintiffs'
2 accounts and do so in a businesslike manner and in keep-
3 ing with banking standards which are customary in the
4 business community.

5 G. That Defendants, and especially Defendant
6 MARINE MIDLAND BANK and the individual Defendants named
7 herein, would properly supervise Plaintiff's accounts
8 and do so in a business like manner and in keeping with
9 banking standards which are customary in the business
10 community.

11 H. That Defendants, and especially Defendant
12 MARINE MIDLAND BANK and the individual Defendants named
13 herein, would not, by acts of omission or commission,
14 do anything to damage or injure Plaintiffs RICHARD
15 VOIGHT and DICK VOIGHT BUICK, INC., their business,
16 their credit standing and/or their personal and
17 business reputations and/or their property.

18 I. That as a fiduciary, Defendants MARINE MIDLAND
19 BANK, MONRIAN, FORNOROLA, and other agents, officers,
20 employees and representatives of Defendant MARINE
21 MIDLAND BANK would, at all times, deal fairly with
22 Plaintiffs and fulfill their fiduciary duties and
23 obligations owed to Plaintiffs.

24 J. That Defendants MARINE MIDLAND BANK, MONRIAN,
25 FORNOROLA, and other agents, officers, employees and repre-
26 sentatives of Defendant MARINE MIDLAND BANK would never deal
27
28

1 with third parties about Plaintiffs and/or disclose to
2 third parties confidential information about Plaintiffs
3 and/or their finances without Plaintiffs' consent, per-
4 mission and knowledge.

5 K. That Defendant MARINE MIDLAND BANK had the
6 best "indirect program".

7 L. That Defendant MARINE MIDLAND BANK had the
8 best system of "reserves".

9 M. That Defendant MARINE MIDLAND BANK had the
10 best interest rates.

11 N. That Defendant MARINE MIDLAND BANK had the
12 best reputation for retail paper.

13 O. That Defendant MARINE MIDLAND BANK would provide
14 100% mortgage financing on Plaintiff RICHARD VOIGHT'S
15 personal residence.

16 P. That Defendant MARINE MIDLAND BANK and its
17 agents, officers, employees and representatives were
18 experts in the handling of all phases of financing
19 automobile dealerships and other aspects of handling
20 automobile dealership accounts.

21 Q. And there were other promises, representations
22 and warranties, express and implied, made to Plaintiffs
23 in order to induce Plaintiffs to do business with said
24 Defendants.

25 39. That as a direct result of all of the aforesaid
26 promises, representations and warranties, as well as other
27 promises, representations and warranties, the negotiations with
28 all Defendants named in this Count III, and as a direct result

1 of the consent, approval and acquiescence by Defendants GENERAL
2 MOTORS in the actions of the Defendants MARINE MIDLAND BANK,
3 and other agents, officers, employees and representatives of
4 Defendant MARINE MIDLAND BANK, Plaintiffs took those affirmative
5 acts set forth in Paragraph 24 herein, and took the following
6 additional affirmative acts:

- 7 A. Borrowed excessive amounts of money;
- 8 B. Became personally liable for excessive amounts
9 of financial liabilities;
- 10 C. Signed personal guarantees;
- 11 D. Placed themselves in a severe financial position;
- 12 E. Opened up Dick Voight Buick, Inc. without
13 adequate capitalization and/or working capital;
- 14 F. Did other acts to their detriment and damage.

15 40. That the aforementioned promises, representations
16 and warranties made by Defendant MARINE MIDLAND BANK, MONRIAN,
17 FORNOROLA, and other agents, officers, employees and representatives
18 of Defendant MARINE MIDLAND BANK, in which Defendant GENERAL
19 MOTORS consented and/or acquiesced, were made with the complete
20 knowledge, consent and approval of all Defendants named herein,
21 and said promises, representations and warranties were false
22 and fraudulent in that said Defendants never intended that they
23 would be carried out or fulfilled, but rather in truth, said
24 Defendants always intended to and did, in fact, act only for their
25 own benefit and profit, all as indicated by numerous acts and/or
26 failures to act, some of which are as follows:

- 27 A. Recommending to Plaintiffs that DICK VOIGHT
28 BUICK, INC. be opened up with insufficient and inadequate

1 capital, and permitting Plaintiffs to operate in that
2 condition for a substantial period of time.

3 B. Failing and/or refusing to give Plaintiffs
4 proper, competent and expert banking advice, and failing
5 and/or refusing to properly supervise Plaintiffs'
6 business and personal accounts.

7 C. Taking actions and/or authorizing actions against
8 Plaintiffs which were designed to harass and embarrass
9 Plaintiffs, as well as BEVERLY VOIGHT.

10 D. Failing to give Defendant RICHARD VOIGHT 100%
11 mortgage financing on his personal home, but instead
12 giving Plaintiff RICHARD VOIGHT 80% mortgage financing,
13 plus an unsecured promissory note for the balance of the
14 purchase price, which Defendant MARINE MIDLAND BANK
15 assured Plaintiff RICHARD VOIGHT would not be "called"
16 until Plaintiff could pay it off from profits earned at
17 DICK VOIGHT BUICK, INC., and later demanding payment
18 contrary to the aforesaid promises, representations and
19 warranties.

20 E. Extracting personal guarantees and other security
21 from Plaintiff RICHARD VOIGHT and his wife, BEVERLY
22 VOIGHT, in order to "improve the Bank's position".

23 F. Agreeing to refinance the building, real estate
24 and dealership facilities of DICK VOIGHT BUICK, INC.
25 and thereafter revoking a written commitment to do so,
26 without explanation.

27 G. Unilaterally cancelling, without explanation and
28 without prior notice, the entire wholesale floor plan

1 of DICK VOIGHT BUICK, INC., thereby making it impossible
2 for Plaintiffs to remain in business.

3 H. Interfering with Plaintiffs' attempts to sell
4 and/or otherwise deal with the Schreibers and other
5 prospective purchasers of DICK VOIGHT BUICK, INC., and
6 its assets.

7 I. Dealing with the Schreibers with regard to
8 Plaintiffs' contracts and agreements and interest rates
9 without Plaintiffs' knowledge, consent or approval, all
10 to Plaintiffs' damage.

11 J. Refusing to honor bank drafts from Manufacturer's
12 Hanover Trust Company at a time when Manufacturer's
13 Hanover had guaranteed payment of certain of Plaintiffs'
14 obligations by Manufacturer's Hanover bank draft.

15 K. Requiring Plaintiff RICHARD VOIGHT and his
16 wife BEVERLY VOIGHT to execute a collateral security
17 mortgage and additional payment schedules for the payment
18 of an Eleven Thousand (\$11,000.00) Dollar personal note
19 (unconnected with Plaintiffs' business) before Defendant
20 MARINE MIDLAND BANK would complete or permit the closing
21 of DICK VOIGHT BUICK, INC. with the Schreibers.

22 L. Agreeing not to foreclose the mortgage on
23 Plaintiffs' dealership facilities and to accept payments
24 of interest only, and thereafter changing said agreements
25 and demanding that Plaintiffs make their payments on said
26 dealership facilities current.

27 M. Placing the mortgage on said dealership
28 facilities in default and "calling" said loan, after

1 agreeing not to do so.

2 N. Forcing Plaintiffs to agree to an increase in
3 interest rates in order to stop foreclosure.

4 O. Delaying the closing with the Schreibers.

5 P. Cancelling, revoking and/or terminating credit
6 cards and other credit rights of Plaintiffs and BEVERLY
7 VOIGHT without explanation and for no apparent reason.

8 Q. Permitting Plaintiffs to operate and stay in
9 business with full knowledge or under circumstances
10 where said Defendants and their agents, officers,
11 employees and representatives should have had complete
12 knowledge that Plaintiffs were undercapitalized and/or
13 short of working capital.

14 R. Failing to recommend corrective causes of action
15 for Plaintiffs which would have cured, or which would
16 have attempted to cure Plaintiffs' financial problems.

17 S. Discriminating against Plaintiffs in the super-
18 vision and/or handling of Plaintiffs' accounts, business
19 and personal.

20 T. Engaging in other conduct which was detrimental
21 and damaging to Plaintiffs, Plaintiffs' rights, Plain-
22 tiffs' property rights, Plaintiffs' contracts and
23 Plaintiffs' contract rights.

24 41. That when Defendants MARINE MIDLAND BANK, MONRIAN,
25 FORNOROLA, and GENERAL MOTORS and their agents, officers, employees and
26 representatives made the aforesaid promises, representations and
27 warranties, said Defendants and their agents, officers, employees
28

1 and representatives knew them to be false and fraudulent and said
2 promises, representations and warranties were made with the intent
3 to deceive and defraud Plaintiffs and to induce them to change
4 and alter their positions, all to their detriment.

5 42. That because of and by virtue of the disparity in
6 the bargaining positions of the parties and the greater knowledge
7 which all Defendants herein possessed at all times, said Defendants
8 and their agents, officers, employees and representatives had a
9 duty to disclose the truth and all material facts to Plaintiffs
10 and said Defendants had a duty to deal with and treat Plaintiffs
11 honestly and fairly.

12 43. That Plaintiffs, at the time said promises, repre-
13 sentations and warranties were made as aforesaid, did not know the
14 truth regarding them, but believed them to be true and relied upon
15 them and had a right to rely upon them.

16 44. That Plaintiffs would not have acted as aforesaid
17 except for their reliance upon said promises, representations and
18 warranties of Defendants and their agents, officers, employees
19 and representatives.

20 45. That Plaintiffs did not discover the truth with
21 regard to the aforementioned promises, representations and warranties
22 and the fraudulent course of conduct to which Plaintiffs were
23 subjected until in or about 1975.

24 46. That as a result of all of the foregoing, Plaintiffs
25 have suffered great damage and injury, as more particularly herein-
26 after alleged.

COUNT IV

47. That Plaintiffs repeat, reallege and reiterate Paragraphs "1-15" and "36-46", and make these allegations against all Defendants named herein.

48. That at all times herein mentioned, Plaintiffs faithfully performed their obligations as they were required to do, pursuant to the several verbal and written agreements and understandings, express and implied, between Plaintiffs and said Defendants.

49. That Defendants named hereinabove breached the several agreements, understandings and promises made to Plaintiffs as alleged herein.

50. That as a result of all of the foregoing, Plaintiffs have suffered great damage and injury, all as more particularly hereinafter set forth.

COUNT V

51. That Plaintiffs repeat, reallege and reiterate Paragraphs "1-10", "14" and "15", "16-31", and make these allegations against Defendants GENERAL MOTORS, EDWARD HIGGINS and their agents, officers, employees and representatives.

52. That in addition to all of the foregoing promises, representations and warranties made to Plaintiffs, Defendants GENERAL MOTORS, HIGGINS and their agents, officers, employees and representatives promised and represented to Plaintiffs that they would do everything possible to help and assist Plaintiffs in becoming successful and further promised and assured Plaintiffs that said Defendants would not do anything which would adversely affect Plaintiffs and/or Plaintiffs' dealership and Plaintiffs'

1 business expectancies, Plaintiffs' contracts or Plaintiffs'
2 contract rights.

3 53. That as a direct result of all of the aforesaid
4 promises, representations and warranties, Plaintiffs took those
5 affirmative acts previously alleged herein and further, in good
6 faith, operated, managed and ran DICK VOIGHT BUICK, INC.

7 54. That the aforementioned promises, representations
8 and warranties were false and fraudulent when made and said
9 Defendants never intended that they be carried out or fulfilled,
10 but rather in truth and in fact, said Defendants and their agents,
11 officers, employees and representatives always intended to and
12 did act only for their own benefit and profit, all as indicated
13 by numerous acts and/or failures to act, some of which are as
14 follows:

15 A. Forcing Plaintiffs to accept unwanted and
16 unordered cars in numbers and/or in models which
17 Plaintiffs could not profitably sell.

18 B. Signing Plaintiff RICHARD VOIGHT'S name to an
19 order for parts and accessories.

20 C. Forcing Plaintiffs to purchase parts and
21 accessories from Defendants GENERAL MOTORS and/or
22 sources designated by Defendants GENERAL MOTORS.

23 D. Forcing Plaintiffs to accept obsolete parts and
24 accessories.

25 E. Refusing to accept a Parts Return from Plain-
26 tiffs at a time when Defendants GENERAL MOTORS knew or
27 should have known that Plaintiffs were having cash flow
28 problems.

1 F. Discriminating against Plaintiffs in the ship-
2 ment of new vehicles, parts and accessories.

3 G. Refusing to approve qualified prospective
4 buyers of DICK VOIGHT BUICK, INC.

5 H. Discouraging and/or interfering with prospective
6 buyers of DICK VOIGHT BUICK, INC.

7 I. Unreasonably withholding permission for
8 Plaintiffs to sell and/or transfer the dealership assets.

9 J. Keeping Plaintiffs in an undercapitalized
10 position at all times during the operation of DICK
11 VOIGHT BUICK, INC.

12 K. Wrongfully withholding and/or delaying payments
13 of factory receivables.

14 L. Refusing to communicate with, contact and/or
15 even talk to Defendant MARINE MIDLAND BANK, Plaintiffs'
16 finance source, in or about October, 1973 and thereafter.

17 M. Approving the purchase by Plaintiffs of the
18 real property and dealership facilities from MOTORS
19 HOLDING and subsequently revoking permission for said
20 purchase.

21 N. Refusing and/or failing to find a buyer for
22 Plaintiffs and Plaintiffs' assets, at a time when
23 Defendants GENERAL MOTORS, HIGGINS and their agents,
24 officers, employees and representatives knew that
25 Plaintiffs were in a desperate financial condition.

26 O. Failing and/or refusing to ship 1975 model
27 vehicles to Plaintiffs in quantities and models which
28 Plaintiffs could have readily sold, at a time when

1 Defendants GENERAL MOTORS and their agents, officers,
2 employees and representatives knew that said
3 vehicles would have enabled Plaintiffs to make profits
4 and to solve their financial problems and to remain a
5 Buick dealer.

6 P. Upon information and belief, interfering with
7 Plaintiffs' applications to the Small Business Administra-
8 tion for financial assistance.

9 Q. Relating false rumors to third parties about
10 Plaintiffs.

11 R. Failing to obtain and/or assist Plaintiffs in
12 obtaining a wholesale finance source from GENERAL MOTORS
13 ACCEPTANCE CORPORATION for Plaintiffs' new vehicle
14 inventory.

15 S. Failure and/or refusal on the part of GENERAL
16 MOTORS ACCEPTANCE CORPORATION to give Plaintiffs a new
17 vehicle wholesale finance line of credit.

18 T. Failing and/or refusing to permit Plaintiffs to
19 borrow back certain monies paid into MOTORS HOLDING
20 during 1973.

21 U. Refusing to help Plaintiffs with their financial
22 problems, even though Plaintiffs made repeated requests
23 for such help and assistance.

24 V. Promising to obtain funds from MOTORS HOLDING
25 and subsequently refusing to do so.

26 W. Refusing to buy out Plaintiffs' investment in
27 DICK VOIGHT BUICK, INC., even though Plaintiffs requested
28 that Defendants do so.

1 X. Refusing to accept a 30-day termination letter
2 of Plaintiffs, which would have made said termination on
3 a mutual basis.

4 Y. Forcing Plaintiffs into a position, financially,
5 whereby Plaintiffs were forced to surrender the franchise.

6 Z. Refusing to return the franchise to Plaintiff.

7 AA. Wrongfully informing potential buyers of
8 Plaintiffs' dealership and dealership facilities that
9 Defendants GENERAL MOTORS did not like the dealership
10 location and would prefer a new location in Plaintiffs'
11 sales area.

12 BB. Engaging in an overall course of conduct with
13 regard to Plaintiffs which was false and fraudulent,
14 including, but not limited to, the foregoing.

15 55. That when Defendants GENERAL MOTORS, HIGGINS and
16 their agents, officers, employees and representatives made the
17 aforesaid promises, representations and warranties, said Defendants
18 and their agents, officers, employees and representatives knew
19 them to be false and fraudulent and said promises, representations
20 and warranties were made with the intent to deceive and defraud
21 Plaintiffs and to induce them to change and alter their positions,
22 all to their detriment.

23 56. That because of and by virtue of the disparity in
24 the bargaining positions of the parties and the greater knowledge
25 which all Defendants herein possessed at all times, said Defendants
26 and their agents, officers, employees and representatives had a
27 duty to disclose the truth and all material facts to Plaintiffs
28 and said Defendants had a duty to deal with and treat Plaintiffs

1 honestly and fairly.

2 57. That Plaintiffs, at the time said promises, repre-
3 sentations and warranties were made as aforesaid, did not know the
4 truth regarding them, but believed them to be true and relied upon
5 them and had a right to rely upon them.

6 58. That Plaintiffs would not have acted as aforesaid
7 except for their reliance upon said promises, representations and
8 warranties of Defendants and their agents, officers, employees
9 and representatives.

10 59. That Plaintiffs did not discover the truth with
11 regard to the aforementioned promises, representations and warranties
12 and the fraudulent course of conduct to which Plaintiffs were
13 subjected until in or about 1975.

14 60. That as a result of all of the foregoing, Plaintiffs
15 have suffered great damage and injury, as more particularly herein-
16 after alleged.

17 COUNT VI

18 61. That Plaintiffs repeat, reallege and reiterate
19 Paragraphs "1-10", "14" and "15", "16-31", "51-60", and make these
20 allegations against Defendants GENERAL MOTORS, HIGGINS and their
21 agents, officers, employees and representatives.

22 62. That at all times herein mentioned, Plaintiffs
23 faithfully performed their obligations as they were required to
24 do, pursuant to the several verbal and written agreements and
25 understandings, express and implied, between Plaintiffs and said
26 Defendants.

27 63. That Defendants named hereinabove breached the
28 several agreements, understandings and promises made to Plaintiffs

1 as alleged herein.

2 64. That as a result of all of the foregoing, Plaintiffs
3 have suffered great damage and injury, all as more particularly
4 hereinafter set forth.

5 COUNT VII

6 65. That Plaintiffs repeat, reallege and reiterate
7 Paragraphs "1-64" herein, and make these allegations against
8 Defendants GENERAL MOTORS, HIGGINS and their agents, officers,
9 employees and representatives, as well as Defendant MARINE MIDLAND
10 BANK, MONRIAN, FORNOROLA, and their agents, officers, employees
11 and representatives.

12 66. That the aforesaid conduct, course of conduct and
13 false and fraudulent promises, representations and warranties
14 pursued by Defendants and their agents, officers, employees and
15 representatives were without justification, were intentional,
16 deliberate and constituted tortious interference with Plaintiffs'
17 business, Plaintiffs' contracts, Plaintiffs' franchising, Plain-
18 tiffs' business expectancies, Plaintiffs' property and property
19 rights.

20 67. That as a result of all of the foregoing, Plaintiffs
21 have suffered great damage and injury, all as more particularly
22 hereinafter set forth.

23 COUNT VIII

24 68. That Plaintiffs repeat, reallege and reiterate
25 Paragraphs "1-67" herein, and make these allegations against
26 Defendants GENERAL MOTORS, HIGGINS and their agents, officers
27 employees and representatives, as well as Defendant MARINE MIDLAND
28

1 BANK, MONRIAN, FORNOROLA, and their agents, officers, employees
2 and representatives.

3 69. That at all times herein, up through and including
4 the present, Plaintiffs had invested substantial sums of money,
5 time, skill, labor and expertise in building a trade name, goodwill
6 and a business reputation.

7 70. That Defendants have unlawfully appropriated for
8 their own commercial use and benefit the investment, labor, effort,
9 reputation, goodwill and property rights of Plaintiffs in said
10 dealership and have deprived Plaintiffs thereof.

11 71. That by their activities as alleged throughout
12 this Complaint, as well as other illegal conduct, Defendants
13 have willfully and maliciously engaged in unfair competition
14 with Plaintiffs, Plaintiffs' business, Plaintiffs' business
15 relationships and Plaintiffs' rights.

16 72. That as a result of all of the foregoing, Plaintiffs
17 were greatly damaged and injured, all as more particularly herein-
18 after set forth.

19 COUNT IX

20 73. That Plaintiffs repeat, reallege and reiterate
21 Paragraphs "1-10", "14" and "15", "16-31", "51-60", "61-64" herein,
22 and make these allegations against Defendants GENERAL MOTORS only.

23 74. That in all of their dealings with said Defendants,
24 Plaintiffs acted in complete good faith.

25 75. That in addition to the foregoing acts and course of
26 conduct performed in bad faith, Defendants did the following:

27 A. Forced Plaintiffs to accept an accountant in
28 Rochester who was "handpicked" by Defendants and their

1 agents, officers, employees and representatives who did
2 not act in Plaintiffs' best interests.

3 B. Forced Plaintiff to sign minutes of meetings of
4 the Board of Directors of Plaintiff DICK VOIGHT BUICK,
5 INC.

6 C. Forced Plaintiffs to execute other documents
7 in blank.

8 D. Interfering directly with Plaintiffs' efforts,
9 at all times, to cure Plaintiffs' financial problems.

10 E. Otherwise acting in bad faith in all of their
11 dealings with Plaintiffs, as well as in causing Plain-
12 tiffs' termination.

13 76. That in all of their dealings with Plaintiffs, as
14 alleged throughout, from the beginning up to the time when Defendants
15 forced Plaintiffs to resign as the dealer, said Defendants acted in
16 bad faith.

17 77. That the repeated and numerous failures of said
18 Defendants and their agents, officers, employees and representatives
19 and their use of coercion, intimidation and threats against
20 Plaintiffs directly violated the provisions of the Automobile
21 Dealer Day In Court Act, 15 U.S.C. §1221, 1222, et seq., as amended
22 as well as Section 197, et seq., of the General Business Law of
23 the State of New York.

24 78. That as a result of all of the foregoing, Plaintiffs
25 have suffered great damage and injury, as more particularly herein-
26 after alleged.

COUNT X

79. That Plaintiffs repeat, reallege and reiterate Paragraphs "1-78" herein, and make these allegations against all Defendants named herein.

80. That as a result of the illegal conduct alleged and/or the several combinations and conspiracies to commit the various illegal acts, the Defendants named herein have acted in concert and conspired with each other and others not named herein, to carry out the foregoing combinations and conspiracies in violation of the provisions of 15 U.S.C. §1, Sherman Anti-Trust Act, and in furtherance of a conspiracy to monopolize and in monopolization of interstate trade and commerce in the United States, including the State of New York, Section 340 of the General Business Law of the State of New York, in violation of 15 U.S.C. §2, Sherman Anti-Trust Act, as well as in violation of the anti-trust laws of the State of New York, Section 340 of the General Business Law of the State of New York.

81. That the effects of the violations alleged herein have been that competition in the market has been foreclosed, monopolized, restrained and lessened.

82. That as a result of all of the foregoing, Plaintiffs were greatly damaged and injured, all as more particularly herein-after set forth.

COUNT XI

83. That Plaintiffs repeat, reallege and reiterate Paragraphs "1-82" herein, and make these allegations against all Defendants named herein.

84. That in addition to the foregoing illegal, wrongful and unlawful conduct on the parts of the Defendants named in this

1 Count XI, the Defendant MARINE MIDLAND BANK, through its officers,
2 agents, employees and representatives on more than one occasion,
3 insisted upon Plaintiffs dealing with Defendant MARINE MIDLAND BANK
4 exclusively as to wholesale and retail financing of automobiles,
5 parts, and accessories, and on more than one occasion, threatened
6 Plaintiffs expressly and/or implied by words or conduct, that
7 Defendant MARINE MIDLAND BANK would cancel all finance lines of
8 Plaintiffs if Defendant MARINE MIDLAND BANK did not receive all of
9 Plaintiffs' retail paper.

10 85. That in addition to the foregoing illegal, wrongful
11 and unlawful conduct on the parts of Defendants named in this
12 Count XI, the Defendants, by and through their agents, officers,
13 employees and representatives, unlawfully dictated and fixed the
14 prices of new and used vehicles which Plaintiffs were selling and
15 required, coerced and forced Plaintiffs, especially Plaintiff
16 DICK VOIGHT BUICK, INC. to participate in factory sponsored and
17 controlled advertising funds, programs and promotions, requiring
18 Plaintiffs to accept delivery of new vehicles which were unwanted
19 or unordered, in order for said Plaintiffs to receive other models,
20 as well as parts and accessories therefor.

21 86. That as a result of all of the foregoing, competition
22 in the market as defined herein has been substantially lessened
23 and/or foreclosed and there is a dangerous probability of monopoliza-
24 tion of such market in violation of §3 and §7 of the Clayton
25 Anti-Trust Act of §1 and §2 of the Sherman Anti-Trust Act, as well
26 as the anti-trust laws of the State of New York, Section 340 of the
27 General Business Law of the State of New York.

28 87. That as a result of all of the foregoing, Plaintiffs
were greatly damaged and injured, all as more particularly hereinafter
set forth.

COUNT XII

88. That Plaintiffs repeat, reallege and reiterate Paragraphs "1-87" herein, and make these allegations against all Defendants named in this Complaint.

89. That the Defendants herein, and their agents, officers, employees and representatives, conspired together and maliciously and willfully entered into a scheme to defraud and deceive Plaintiffs, to interfere with Plaintiffs' business, to deprive Plaintiffs of their investments and Plaintiffs' business expectancies and property, and said Defendants further conspired to engage in unfair competition and to violate the Sherman Anti-Trust Act, §1 and §2, the Clayton Anti-Trust Act, §3 and §7, as well as the anti-trust laws of the State of New York, Section 340 of the General Business Law of the State of New York.

90. That the said conspiracies of Defendants were carried out and completed by the several acts of misconduct by Defendants and their agents, officers, employees and representatives as alleged herein.

91. That as a result of the foregoing, Plaintiffs were greatly damaged and injured, all as more particularly hereinafter set forth.

COUNT XIII

92. That Plaintiffs repeat, reallege and reiterate Paragraphs "1-91" herein, and make these allegations against all Defendants named in this Complaint.

93. That by virtue of the position of Defendants in relationship to Plaintiffs, said Defendants GENERAL MOTORS were the sole suppliers in the United States of retail products, and

1 Plaintiffs' landlord and Plaintiffs were constantly under the con-
2 trol and domination of said Defendants GENERAL MOTORS and subject
3 to the dictates of said Defendants.

4 94. That by virtue of the position of Defendants MARINE
5 MIDLAND BANK, MONRIAN and FORNOROLA, said Defendants were Plain-
6 tiffs' sole wholesale finance source, source of capital and said
7 Defendants, and in addition, Defendants GENERAL MOTORS had
8 possession and control over Plaintiffs' books, records and other
9 confidential documents and Plaintiffs were constantly under the
10 control and domination of said Defendants MARINE MIDLAND BANK,
11 MONRIAN, FORNOROLA, and their agents, officers, employees and
12 representatives.

13 95. That by virtue of the positions of Defendants
14 GENERAL MOTORS, MOTORS HOLDING, EDWARD HIGGINS, and other agents,
15 officers, employees and representatives as controlling shareholders
16 and/or controlling directors of DICK VOIGHT BUICK, INC., said
17 Defendants and their agents, officers, employees and representatives
18 had those duties imposed upon them by law as controlling shareholders
19 and controlling directors of Plaintiffs and as such, said Defendants
20 were placed in a fiduciary capacity with Plaintiffs.

21 96. That at no time during any of the dealings between
22 Plaintiffs and any of the Defendants named herein, were Plaintiffs
23 on an equal footing with any of the Defendants or their agents,
24 officers, employees and representatives, nor were they ever on an
25 equal footing with any of the Defendants or their agents, officers,
26 employees and representatives, nor were they ever in an equal
27 bargaining position.
28

1 97. That by virtue of the unequal positions between
2 Plaintiffs and Defendants and their agents, officers, employees
3 and representatives, the control exercised by said Defendants and
4 their agents, officers, employees and representatives over
5 Plaintiffs and Plaintiffs' business, and the possession by said
6 Defendants of all of Plaintiffs' books and confidential material,
7 all of the said Defendants and their agents, officers, employees
8 and representatives were in a special fiduciary relationship with
9 Plaintiffs at all times and in such relationships, said Defendants
10 placed themselves in a position of having special duties and
11 obligations of trust and confidence which they owed to Plaintiff and
12 with regard to Plaintiffs.

13 98. That said control, inequality of positions and the
14 trust and confidence placed in said Defendants created in all of
15 the said Defendants, a special fiduciary duty toward Plaintiffs.

16 99. That by virtue of the acts of misconduct of all
17 Defendants, committed jointly and severally, said Defendants inten-
18 tionally and in bad faith, breached and abused said fiduciary
19 duties and the entire fiduciary relationships.

20 100. That as a result of the foregoing, Plaintiffs were
21 greatly damaged and injured, all as more particularly hereinafter
22 set forth.

23 COUNT XIV

24 101. That Plaintiffs repeat, reallege and reiterate
25 Paragraphs "1-100" herein, and make these allegations against
26 all Defendants named herein.

27 102. That the aforesaid course of conduct was and
28 constituted gross negligence on the joint and several parts of

1 the Defendants named in the Count XIV.

2 103. That said Defendants were grossly negligent and/or
3 pursued a course of conduct in wanton disregard of Plaintiffs'
4 rights, Plaintiffs' business and Plaintiffs' business expectancies.

5 104. That the injuries and damages which Plaintiffs
6 suffered were caused solely by the acts and/or failures to act
7 on the parts of said Defendants constituting gross negligence
8 without any negligence on Plaintiffs' parts contributing thereto.

9 105. That as a result of all of the foregoing, Plain-
10 tiffs have suffered great damage and injury, all as more particularly
11 hereinafter set forth.

12 COUNT XV

13 106. That Plaintiffs repeat, reallege and reiterate
14 Paragraphs "1-105" herein, and make the following allegations
15 against all Defendants named herein.

16 107. That Defendants named herein and their agents,
17 officers, employees and representatives conspired together and
18 with others not named herein and maliciously entered into a
19 scheme and conspiracy to defraud and deceive Plaintiffs, to
20 interfere with Plaintiffs' business and personal affairs, Plain-
21 tiffs' business and personal rights, to deprive Plaintiffs of their
22 investments, their profits, future profits, business expectancies,
23 and said Defendants further conspired to violate state and federal
24 laws enumerated herein, as well as other laws, including the
25 common law of the State of New York.

26 108. That said conspiracies and combinations were
27 carried out, effected and completed by the several overt acts
28 and the acts of misconduct of and by Defendants named herein

1 and their agents, officers, employees and representatives, all
2 as previously alleged herein.

3 109. That as a result of all of the foregoing, Plain-
4 tiffs have suffered great damage and injury, all as more par-
5 ticularly hereinafter set forth.

6 COUNT XVI

7 110. That Plaintiffs repleat, reallege and reiterate
8 Paragraphs "1-31", "36-46", "51-60" herein, and make these
9 allegations against all Defendants.

10 111. That as previously alleged, in or about the
11 latter part of 1966, and during the spring of 1967, the Defendants
12 herein sought out the Plaintiff in an effort to induce the
13 Plaintiff, RICHARD VOIGHT, to invest in and to enter into a
14 franchise dealership agreement, and other agreements, with
15 Defendant GENERAL MOTORS.

16 112. That the Defendants, GENERAL MOTORS, by and
17 through their agents, officers, employees and representatives,
18 offered and attempted to sell to the Plaintiff RICHARD VOIGHT,
19 the franchise of and stock in the new dealership corporation,
20 which had been formed and which was called DICK VOIGHT BUICK, INC.

21 113. That in or about the spring of 1967, the Plaintiff
22 RICHARD VOIGHT, did in fact invest in and buy said franchise
23 and stock.

24 114. That the franchise agreements and the stock in
25 the new dealership corporation were and are securities, as defined
26 by the Securities Act of 1933, and the Securities and Exchange
27 Act of 1934, and are subject to regulation thereunder.
28

1 115. That at the time that the Plaintiff was negotiating
2 with the Defendants, GENERAL MOTORS, as well as at the time that
3 the Plaintiff was negotiating with the Defendant, MARINE MIDLAND
4 BANK, and their agents, officers, employees and representatives
5 toward the investment of the Plaintiff in and the sale of the
6 franchise and stock in the new dealership corporation to the
7 Plaintiff, said Defendants and their agents, officers, employees
8 and representatives made those promises, representations and
9 warranties to the Plaintiff as previously alleged herein, and
10 further failed to disclose material facts to Plaintiff, as pre-
11 viously alleged.

12 116. That the aforesaid promises, representations and
13 warranties and failures to disclose were made by said Defendants
14 with the intent of inducing and influencing Plaintiffs to invest
15 in and purchase the franchise and stock in the new dealership
16 corporation, and to cause the Plaintiff to believe that the new
17 dealership corporation, and his investment, would be profitable and
18 successful as previously alleged.

19 117. That in addition to those statements, promises
20 and representations and warranties made to the Plaintiff by the
21 Defendants GENERAL MOTORS, said Defendants, for many years past,
22 the exact date being presently unknown to Plaintiff, and continuing
23 up to and including the present, have prepared and publicly
24 disseminated various documents, reports, agreements and advertise-
25 ments in the press, on television and radio, and by other means,
26 for the purpose of influencing and soliciting investors, such as
27 the Plaintiff herein, to participate in their dealership corporations
28 under the programs of MOTORS HOLDING DIVISION.

ROBERT F. WOOD, P.C. - ATTORNEY AT LAW - 800 POWERS BUILDING - ROCHESTER, N. Y. 14614

1 118. That the promises, representations and warranties
2 and the statements of said Defendants, both public and those
3 privately made to the Plaintiff, as well as the failures to dis-
4 close, were false and fraudulent, as previously alleged, and
5 constituted untrue, misleading and fraudulent statements of
6 material facts, and such statements, promises and representations
7 and warranties omitted to state facts necessary in order to make
8 the statements, promises and representations made, in the light
9 of the circumstances under which they were made, not misleading.

10 119. That the Plaintiff had a right to rely upon said
11 statements, promises, representations and warranties and did in
12 fact rely upon them in investing in and purchasing the franchise
13 and stock in the new dealership corporation.

14 120. That the Plaintiff, RICHARD VOIGHT, in reliance
15 upon the statements, promises and representations of the Defendants
16 forebore from selling the franchise and stock in the dealership
17 corporation, but was eventually forced, upon his unlawful termina-
18 tion, to sell said franchise and stock back to the Defendants.

19 121. That said Defendants, by engaging in the acts,
20 practices and courses of business and conduct as alleged herein,
21 and through the use of the mails and the instrumentalities of
22 interstate commerce, employed manipulative, deceptive and fraudulent
23 devices, schemes and artifices to defraud the Plaintiff in the
24 purchase and sale of a security.

25 122. That, among other things, the dealings through
26 the instrumentalities of interstate commerce and United States
27 mail, by and between the Plaintiff and the Defendant, and their
28 agents, officers, employees and representatives with respect to

1 the transactions set forth herein were:
2

3 A. Defendants induced the Plaintiff to make
4 several trips from the Chicago, Illinois area to Western
5 New York State, as well as to other states.

6 B. The Defendants and their agents, officers,
7 employees and representatives used the United States
8 mail to transmit various documents, contracts and
9 agreements, including, but not limited to, the franchise
10 agreement with the Plaintiff and the stock of the
11 dealership corporation.

12 C. State lines were crossed by the Defendants
13 and their agents, officers, employees and representatives
14 by automobile, airplane and various documents were
15 transported by such means at various times.

16 D. At various times alleged herein, both in the
17 beginning, and at the time when Defendants and their
18 agents, officers, employees and representatives unlaw-
19 fully forced the termination of the Plaintiff as a
20 Buick dealer, said Defendants and their agents, officers,
21 employees and representatives made numerous telephone
22 calls and conducted conversations with regard to the
23 aforesaid transactions, many of which crossed the state
24 lines.

25 123. By reason of all of the foregoing, the Defendants
26 and their agents, officers, employees and representatives violated
27 the Securities Act of 1933, 15 U.S.C., §77(a), 277(aa), and
28 particularly §77(e), §77(l) and §77(q) thereof, as well as the

1 Securities and Exchange Act of 1934, particularly §10(b) thereof,
2 and Rule 10B-5 issued thereunder (17 C.F.R., §240.10B-5).

3 124. That the Defendants and their agents, officers,
4 employees and representatives are jointly and severally liable
5 as co-conspirators and defrauders, and Defendants particularly
6 are also liable as controlling persons, within the meaning of
7 the Securities Act of 1933, 15 U.S.C. §77(o).

8 125. That the false and fraudulent methods by which
9 the Plaintiff was induced to purchase the franchise of and stock
10 in the dealership corporation and later forced to forfeit said
11 franchise and stock have been used by the Defendants GENERAL
12 MOTORS and their agents, officers, employees and representatives
13 on numerous occasions in similarly establishing other dealers
14 and dealerships, and thereafter unlawfully causing their termina-
15 tion and causing them to forfeit their stock.

16 126. That all of the foregoing methods used by the
17 Defendants GENERAL MOTORS, their subsidiaries and their agents,
18 officers, employees and representatives were, and are part of a
19 nationwide course of conduct established by said Defendants, and
20 said methods are part of a malicious, preconceived, intentional
21 and premeditated plan and design established and implemented by
22 said Defendants to further the goals and purposes of the said
23 Defendants in wanton disregard of the Plaintiffs' rights and the
24 rights of hundreds of other dealers throughout the United States
25 who have been similarly treated.

26 127. That as a direct and proximate result of all of
27 the foregoing, Plaintiff has been damaged and injured all as more
28 particularly hereinafter set forth.

COUNT XVII

ROBERT F. WOOD, P.C. - ATTORNEY AT LAW - 800 POWERS BUILDING - ROCHESTER, N. Y. 14614

1 128. That Plaintiffs repeat, reallege and reiterate
2 Paragraphs "1-127" herein, and make these allegations against all
3 Defendants named herein.

4 129. That when Plaintiffs became the franchised dealer
5 of Defendants GENERAL MOTORS, Plaintiffs purchased and Defendants
6 GENERAL MOTORS sold and transferred certain assets and other
7 personal property, new vehicles, parts and accessories, the
8 franchise and other agreements and choses in action.

9 130. That when Plaintiffs became the franchised Buick
10 Dealer, Plaintiffs purchased, and Defendant MARINE MIDLAND BANK
11 sold and transferred certain assets and other personal property,
12 agreements and choses in action.

13 131. That all transactions by and between Plaintiffs
14 and Defendants GENERAL MOTORS and MARINE MIDLAND BANK, by and
15 through their agents, officers, employees and representatives
16 were sales and purchases of personal property.

17 132. That all of the agreements, contracts and documents,
18 and understandings, including, but not limited to, the franchise
19 agreement, the Floor Plan Agreement and other agreements which
20 Plaintiffs were required to sign and otherwise execute, as well as
21 those which Plaintiffs did not sign or otherwise execute were
22 prepared for Plaintiffs by said Defendants, their agents, officers,
23 employees and representatives, and the terms and conditons thereof
24 were dictated by said defendants, their agents, officers,
25 employees and representatives.

26 133. That at no time did Plaintiffs or their attorney
27 have an opportunity to thoroughly review said agreements, contracts,
28 documents and understandings, including, but not limited to, the

1 franchise agreement.

2 134. That at no time did Plaintiffs or their attorney
3 have an opportunity to negotiate any of the terms, conditions and/o
4 language of any of said agreement, contracts, documents and
5 understandings, including, but not limited to, the franchise
6 agreement and the Floor Plan Agreement.

7 135. That as previously alleged herein, said agreements,
8 contracts, documents and understandings, including, but not
9 limited to, the franchise agreement and Floor Plan Agreement as
10 prepared, dictated and used by said Defendants and their agents,
11 officers, employees and representatives were part of the implementa-
12 tion by said Defendants and their agents, officers, employees and
13 representatives of premeditated, preconceived and intentional plan
14 and design to further the purposes and goals of said Defendants,
15 all as alleged herein.

16 136. That said agreements, contracts, documents and
17 understandings, oral and written, including, but not limited to,
18 the franchise agreement and the Floor Plan Agreement formed overall
19 contractual arrangements by and between Plaintiffs and said
20 Defendants and their agents, officers, employees and representatives.

21 137. That upon information and belief, there were
22 numerous clauses and language in said agreements, contracts, docu-
23 ments and understandings, oral and written, including, but not
24 limited to, the franchise agreement and the Floor Plan Agreement
25 which were unconscionable and not prepared and submitted to
26 Plaintiffs in good faith insofar as Plaintiffs' rights, Plaintiffs'
27 contractual rights, Plaintiffs' business relationships, Plaintiffs'
28 property rights and Plaintiffs' reasonable business expectancies

1 were concerned.

2 138. That said agreements, contracts, documents and
3 understandings, jointly and severally, violated and do violate
4 Section 2-302 of the Uniform Commercial Code.

5 139. That in committing the acts herein alleged, said
6 Defendants GENERAL MOTORS and MARINE MIDLAND BANK have acted with
7 malice toward both Plaintiffs and by virtue of said malicious,
8 arbitrary, capricious and unwarranted conduct, Plaintiffs are
9 entitled to recover punitive and exemplary damages from said
10 Defendants, as more particularly hereinafter set forth.

11 140. That by reason of all of the foregoing, Plaintiffs
12 were otherwise injured and damaged, all as more particularly herein-
13 after set forth.

14 COUNT XVIII

15 141. That Plaintiffs repeat, reallege and reiterate
16 Paragraphs "1-140" herein, and make these allegations against all
17 Defendants named herein.

18 142. That as previously alleged herein, Plaintiffs at all
19 times herein mentioned used their best efforts and devoted their
20 energies and best expertise in the sale and promotion of sale of
21 all of the products of the Defendants GENERAL MOTORS and MARINE
22 MIDLAND BANK.

23 143. That at all times herein mentioned, said Defendants
24 did not use their best efforts in supplying said products to
25 Plaintiffs..

26 144. That on numerous occasions, said Defendants GENERAL
27 MOTORS forced unwanted and unordered vehicles, parts and accessories
28 upon Plaintiffs, notwithstanding Plaintiffs' constant and repeated

ROBERT F. WOOD, P.C. - ATTORNEY AT LAW - 800 POWERS BUILDING - ROCHESTER, N. Y. 14614

1 objections and notwithstanding the detrimental effect that said
2 "forcing" had upon Plaintiffs, the franchise and the dealership.
3 In addition, Defendant MARINE MIDLAND BANK, on numerous occasions,
4 forced and/or attempted to force Plaintiffs to sell retail paper
5 to Defendant MARINE MIDLAND BANK.

6 145. That by use of such methods such as "forcing" and
7 dealing with Plaintiffs in other ways, said Defendants and their
8 agents, officers, employees and representatives acted in bad faith
9 at all times in dealing with Plaintiffs.

10 146. That said "forcing" methods and arbitrary methods
11 of dealing as well as other methods of dealing with Plaintiffs
12 violated Section 2-306 of the Uniform Commercial Code.

13 147. That in committing the acts herein alleged, the
14 above-named Defendants acted with malice toward both Plaintiffs and
15 by virtue of said malicious, arbitrary, capricious and unwarranted
16 conduct, Plaintiffs are entitled to recover punitive and exemplary
17 damages from said Defendants, as more particularly hereinafter set
18 forth.

19 148. That by reason of all of the foregoing, Plaintiffs
20 were otherwise injured and damaged, all as more particularly herein-
21 after set forth.

22 DAMAGES

23 149. That as a direct and proximate result of all of
24 the foregoing and the false, fraudulent, wrongful, malicious,
25 intentional, illegal and unlawful acts, conduct, practices, course
26 of conduct, misrepresentations, combinations and conspiracies of
27 all of the above-named Defendants, Plaintiffs have and still are
28 sustaining substantial damages in an amount which is presently

1 not specifically determined and which cannot be determined with
2 precision until Plaintiffs have had an opportunity for adequate
3 discovery of Defendants' and their co-conspirators' books and
4 records.

5 150. That the foregoing illegal acts of misconduct,
6 frauds, misrepresentations, breaches of contracts, agreements, and
7 understandings, breaches of fiduciary obligations owed to Plaintiff,
8 the conspiracies and entire course of conduct of all of the
9 above-named Defendants and their agents, officers, employees and
10 representatives were deliberate, intentional, arbitrary, capricious,
11 malicious and/or were wanton conduct in complete disregard of
12 Plaintiffs, Plaintiffs' property, Plaintiffs' investments and
13 Plaintiffs' future business expectancies, and were performed, done
14 and carried out in complete bad faith by said Defendants and their
15 agents, officers, employees and representatives.

16 151. That upon information and belief, the foregoing
17 acts, promises, representations and warranties, statements and
18 entire course of conduct pursued, done, performed, made and
19 breached by Defendants and their agents, officers, employees and
20 representatives herein were done, performed, pursued, made and
21 breached by the said Defendants and their agents, officers,
22 employees and representatives, jointly and severally, in the
23 course of their duties with their respective employees and business
24 entities, and/or were authorized, ratified, ordered, directed,
25 done, pursued and performed by said Defendants and their agents,
26 officers, employees and representatives while actively engaged in
27 the management of each of the above-named Defendants' corporate
28 and/or partnership business affairs.

1 WHEREFORE, by reason of all of the foregoing, Plaintiffs
2 seek and demand judgment against all of the above-named Defendants,
3 jointly and severally, for money damages, both compensatory and
4 punitive, and for loss of customers, loss of sales, loss of value
5 to and destruction of Plaintiffs' business, loss of stock in DICK
6 VOIGHT BUICK, INC., loss of value of stock in DICK VOIGHT BUICK, INC.,
7 loss of profits, future profits, anticipated profits, loss of
8 investments, loss of business goodwill, loss of and damage to
9 business reputation, loss due to inability to transfer, sell and
10 assign valuable properties, injury to credit standing, loss of
11 salary, loss of bonus, loss of vacation pay, loss of income, loss
12 of pay raises never realized by Plaintiff, loss of livelihood
13 and property, loss of two demonstrator automobiles, loss of dealer
14 expense account, losses due to misappropriation of Plaintiffs'
15 assets and those of DICK VOIGHT BUICK, INC., and punitive and
16 exemplary damages for the malicious, intentional, deliberate,
17 wanton and grossly negligent, wrongful, illegal and unlawful acts
18 and conduct of the Defendants, their agents, officers, employees
19 and representatives and their subsidiaries, all as alleged herein,
20 and the judgment now sought and demanded by Plaintiffs against
21 said Defendants and each of them is as follows:

22 A. Compensatory damages in the amount of Twenty-
23 Five Million (\$25,000,000.00) Dollars.

24 B. Punitive and exemplary damages in the amount of
25 Ten Million (\$10,000,000.00) Dollars.

26 C. Interest on any jury verdict and/or judgment
27 after trial from the date of the initial wrongs committed
28 by Defendants against Plaintiffs, to the date of the

1 judgment herein and thereafter to date of payment and
2 satisfaction of said judgment.

3 D. Treble (threefold) damages, together with costs
4 of suit and reasonable attorneys' fees for the anti-trust
5 violations of the Sherman Anti-Trust Act and the Clayton
6 Anti-Trust Act.

7 E. Treble (threefold) damages, together with
8 costs of suit and attorneys' fees for violations of the
9 New York statutes.

10 F. Judgment declaring all of the aforesaid viola-
11 tions, combinations, conspiracies, monopolies and attempts
12 to monopolize an unlawful restraint of trade and commerce
13 in violation of the Sherman Act, Clayton Act, and the
14 Anti-Trust Statutes of the State of New York, Section
15 340 of the General Business Law of the State of New York.

16 G. Interest on the judgment from the date of the
17 wrongful, unlawful and illegal termination of Plaintiff
18 to the date of the judgment herein and interest on said
19 judgment thereafter.

20 H. All attorneys' fees in connection with the
21 preparation of and prosecution of these claims against
22 Defendants.

23 I. Costs and disbursements, including, but not
24 limited to, extraordinary costs, including any and all
25 out-of-pocket costs, disbursements and expenses incurred
26 by Plaintiffs as a result of any appeals taken by
27 Defendants before trial, as well as reasonable attorneys'
28 fees for said appeals.

1 J. Loss of Plaintiffs' initial investments.

2 K. Loss of the true market value in DICK VOIGHT
3 BUICK, INC. at the time of the illegal termination.

4 L. Such other and further damages and injuries,
5 including any and all out-of-pocket costs, expenses, plus
6 the costs and disbursements of this action.

7 Dated: April 22, 1976

8
9 ROBERT F. WOOD

10 ROBERT F. WOOD, P.C.
11 Attorneys for Plaintiffs
12 Office and Post Office Address
13 800 Powers Building
14 Rochester, New York 14614
15 Telephone: (716) 454-4073
16
17
18
19
20
21
22
23
24
25
26
27
28

ROBERT F. WOOD, P.C. - ATTORNEY AT LAW - 800 POWERS BUILDING - ROCHESTER, N. Y. 14614

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF NEW YORK

3 RICHARD VOIGHT,
4 DICK VOIGHT BUICK, INC.,

5 Plaintiffs,

INTERROGATORIES

6 vs.

7 GENERAL MOTORS CORPORATION,
8 MOTORS HOLDING DIVISION, GENERAL MOTORS CORPORATION;
9 BUICK MOTOR DIVISION, GENERAL MOTORS CORPORATION;
10 GENERAL MOTORS ACCEPTANCE CORPORATION,
11 ARGONAUT DIVISION, GENERAL MOTORS CORPORATION;
12 MARINE MIDLAND BANK, WILLIAM MONRIAN, EDWARD HIGGINS,

13 Defendants.

14 1. Set forth the organizational table and chart of
15 the BUICK MOTOR DIVISION of GENERAL MOTORS CORPORATION and MOTORS
16 HOLDING DIVISION of the GENERAL MOTORS CORPORATION for years 1966,
17 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975 and 1976.

18 2. Identify each Regional Manager, District Manager,
19 Zone Manager, Branch Manager, Assistant Zone Manager, Assistant
20 Regional Manager, Assistant District Manager, Distribution Manager
21 and all other agents, officers, employees and representatives of
22 Defendants GENERAL MOTORS CORPORATION, BUICK MOTOR DIVISION, MOTORS
23 HOLDING DIVISION, and GENERAL MOTORS ACCEPTANCE CORPORATION who
24 called upon or dealt with the Plaintiffs during the relevant time
25 period.

26 3. Identify each member of the Board of Directors of
27 DICK VOIGHT BUICK, INC. for the relevant time period.

28 4. Identify each officer of DICK VOIGHT BUICK, INC. for
the relevant period.

5. Identify each and every meeting, discussion, conversation
and/or

ROBERT F. WOOD, P.C. - ATTORNEY AT LAW - 800 POWERS BUILDING - ROCHESTER, N. Y. 14614

1 telephone conversation had between Plaintiff RICHARD VOIGHT and
2 each agent, officer, employee or representative of Defendants GEN-
3 ERAL MOTORS CORPORATION, BUICK MOTOR DIVISION and/or MOTORS HOLD-
4 ING DIVISION and/or GENERAL MOTORS ACCEPTANCE CORPORATION in 1966
5 and/or 1967 which related in any manner whatsoever to RICHARD
6 VOIGHT'S becoming a BUICK dealer in and around metropolitan Chica-
7 go, the State of Illinois, the State of California, Van Nuys, Cal-
8 ifornia and/or Monroe County, State of New York.

9 6. Identify each and every document which refers direct-
10 ly or indirectly to Interrogatory #5 and/or the answers thereto.

11 7. Identify each and every type of report, and/or record
12 and/or contact report which refers in any manner whatsoever to
13 visits and/or contacts by agents, officers, employees and repres-
14 entatives of any of the above-named Defendants on RICHARD VOIGHT
15 and/or DICK VOIGHT BUICK, INC. during the relevant period.

16 8. Identify each and every type of report, and/or record
17 which Defendants keep or have kept in the ordinary course of
18 business during the relevant period which relate to BUICK dealer-
19 ships.

20 9. Identify each and every contract, document, agreement
21 and/or other papers signed by Plaintiff RICHARD VOIGHT to which
22 any of the Defendants was a party, in or about 1967, whereby
23 Plaintiffs entered into business relationships with any of the
24 above-named Defendants.

25 10. Identify each and every market survey and/or other
26 document shown to RICHARD VOIGHT and/or discussed with RICHARD
27 VOIGHT in or about 1966-1967 at the time that RICHARD VOIGHT was
28 contemplating a move to the Town of Greece, County of Monroe, and

ROBERT F. WOOD, P.C. - ATTORNEY AT LAW - 800 POWERS BUILDING - ROCHESTER, N. Y. 14614

1 State of New York.

2 11. Identify each and every award, citation, and any
3 other form of recognition which the Plaintiffs received during the
4 relevant period with regard to Plaintiffs' performance as a BUICK
5 dealer in the Town of Greece, County of Monroe and State of New
6 York. If there were none, so state.

7 12. With regard to the stock ownership of DICK VOIGHT
8 BUICK, INC. at the time that DICK VOIGHT BUICK, INC. first opened
9 up for business, set forth the following:

10 A. The identity of the owners of any and all common
11 stock-Class A and the number of shares held by each.

12 B. The identity of any and all owners of the common
13 stock-Class B and the number of shares held by each.

14 C. The owners' identity of any and all the preferred
15 stock-Class A and the number of shares held by each.

16 D. The owners' identity of any and all the preferred
17 stock-Class B and the number of shares held by each.

18 13. During the time that the Plaintiff RICHARD VOIGHT
19 was the dealer at DICK VOIGHT BUICK, INC., set forth the number of
20 shares of stock held by GENERAL MOTORS CORPORATION and/or MOTORS
21 HOLDING DIVISION which was purchased and/or retired by the Plaintiff
22 RICHARD VOIGHT and/or DICK VOIGHT BUICK, INC. In this regard, set
23 forth the dates of each purchase and/or retirement of said stock
24 by the Plaintiffs and the number of shares purchased and/or retired
25 on each such date.

26 14. Identify each and every agent, officer, employee and
27 representative of each Defendant above-named who recommended, in
28 the first instance, that MARINE MIDLAND BANK act as and be the
leading institution to handle any and all financing for RICHARD

1 VOIGHT and/or DICK VOIGHT BUICK, INC.

2 15. Identify DONALD MURRAY.

3 16. Identify JOHN DOYLE.

4 17. Explain in detail what the Defendant MARINE MIDLAND
5 BANK means by an "indirect program".

6 18. Identify each and every meeting, discussion and
7 conversation and/or telephone conversation which the Defendant
8 MARINE MIDLAND BANK, DONALD MURRAY, JOHN DOYLE and any other
9 agents, officers, employees or representatives of the Defendant
10 MARINE MIDLAND BANK had with RICHARD VOIGHT and/or DICK VOIGHT
11 BUICK, INC. in 1966 and/or the Spring of 1967 regarding financing
12 of DICK VOIGHT BUICK, INC. and/or personal financing for any of
13 the needs of RICHARD VOIGHT, and his wife, BEVERLY VOIGHT.

14 19. Identify each and every meeting, discussion and
15 conversation and/or telephone conversation which the Defendant
16 MARINE MIDLAND BANK and/or any of its agents, officers, employees
17 or representatives had with the Plaintiff RICHARD VOIGHT regarding
18 the financing of the Plaintiff RICHARD VOIGHT'S personal residence
19 in the County of Monroe, in the calendar year 1966 and/or 1967.

20 20. Identify each and every document which refers to
21 Interrogatories 18 and 19 and/or the answers thereto.

22 21. Set forth the number of meetings, discussions and
23 conversations which DONALD MURRAY and/or JOHN DOYLE of MARINE
24 MIDLAND BANK had with the Plaintiff RICHARD VOIGHT and/or DICK
25 VOIGHT BUICK, INC. during the relevant period, and set forth the
26 dates of each.

27 22. Identify each and every document which refers to
28 Interrogatory # 21, and/or the answer thereto.

1 23. Set forth each and every reason why the GENERAL
2 MOTORS ACCEPTANCE CORPORATION did not act as the wholesale finance
3 source for DICK VOIGHT BUICK, INC. at the time that DICK VOIGHT
4 BUICK, INC. first opened up for business.

5 24. Set forth any and all circumstances under which the
6 Defendant GENERAL MOTORS ACCEPTANCE CORPORATION acted as the whole-
7 sale finance source for GENERAL MOTORS CORPORATION dealers.

8 25. At any time during the relevant period, did the
9 Defendant GENERAL MOTORS ACCEPTANCE CORPORATION accept new GENERAL
10 MOTORS CORPORATION dealers and/or act as the wholesale finance
11 source for GENERAL MOTORS CORPORATION dealers which had formerly
12 been financed by and/or whose wholesale finance lines had been
13 handled by local lending institutions other than GENERAL MOTORS
14 ACCEPTANCE CORPORATION in the County of Monroe and State of New
15 York.

16 26. If the answer to Interrogatory #25 is yes, set forth
17 the reasons why each such dealer accepted by GENERAL MOTORS
18 ACCEPTANCE CORPORATION during the relevant period was accepted,
19 and why the wholesale finance line of each such dealer was assumed
20 by GENERAL MOTORS ACCEPTANCE CORPORATION and/or taken over by the
21 Defendant GENERAL MOTORS CORPORATION from the other lending in-
22 stitutions.

23 27. Identify each and every meeting, discussion and
24 conversation and/or telephone conversation which the Defendant
25 GENERAL MOTORS ACCEPTANCE CORPORATION and/or any agent, officer,
26 employee and representative thereof had with the Plaintiffs re-
27 garding wholesale financing and/or any other type of financing
28 during the relevant period.

28. Identify each and every document which refers to Interrogatory #27 and/or the answer thereto.

29. Identify GILBERT GUALDONI.

30. Identify each and every agent, officer, employee and representative of the Defendant MARINE MIDLAND BANK who handled and/or dealt with the Plaintiffs during the relevant period.

31. Identify each and every file and/or department of MARINE MIDLAND BANK which refers directly or indirectly or in any manner whatsoever to the Plaintiffs during the relevant period.

32. Identify each agent, officer, employee and representative of Defendant MARINE MIDLAND BANK who, during the relevant period, supervised and/or held a veto power and/or was in control of the decision making process with regard to each and every account of the Plaintiffs, both business and personal.

33. Set forth the total amount of capitalization of DICK VOIGHT BUICK, INC. established by, and/or recommended by, any of the above-named Defendants at the time that DICK VOIGHT BUICK, INC. first opened up for business.

34. Set forth the total amount of working capital established by and/or recommended by any of the above-named Defendants for DICK VOIGHT BUICK, INC. at the time that DICK VOIGHT BUICK, INC. first opened up for business.

35. Identify each and every document which refers directly or indirectly to Interrogatories #33 and #34 and/or the answers thereto.

36. Identify JOSEPH LECHNER.

37. Set forth the manner in which DICK VOIGHT BUICK, INC.'s first shipment of parts and/or accessories from

1 GENERAL MOTORS CORPORATION was ordered.

2 38. Were any obsolete parts sold to DICK VOIGHT BUICK,
3 INC. at the time that DICK VOIGHT BUICK, INC. was first opened up
4 for business. If the answer to this interrogatory is yes, explain
5 in detail.

6 39. At any time during the relevant period, did the
7 Defendants take back any obsolete parts which had been originally
8 sold to DICK VOIGHT BUICK, INC. by said Defendants? Regardless of
9 the answer, explain in detail.

10 40. At any time during the relevant period, did the
11 Plaintiffs request that any of the above-named Defendants take
12 back any parts or accessories of DICK VOIGHT BUICK, INC. If
13 so, set forth the facts and circumstances surrounding each and every
14 such request.

15 41. Did any of the Defendants refuse to take back any
16 parts or accessories of the Plaintiffs during the relevant period,
17 even though the Plaintiffs specifically requested such parts return?
18 Explain in detail the reasons for the each such refusal on the part
19 of each such Defendant involved, and set forth the date of each.

20 42. At any time during the relevant period, was the
21 Plaintiff, DICK VOIGHT BUICK, INC. undercapitalized? If the
22 answer is "yes", set forth the date and time that each Defendant
23 above-named first became aware of fact that the Plaintiff, DICK
24 VOIGHT BUICK, INC. was undercapitalized.

25 43. Set forth and describe in detail each affirmative
26 action plan and/or course of action which each Defendant
27 above-named recommended for DICK VOIGHT BUICK, INC. in
28 order to cure the undercapitalization problem referred to in

1 Interrogatory #42. If no such action plan was recommended by
2 any Defendant above-named, so state.

3 44. If there was any affirmative action plan, and/or
4 course of action recommended by any Defendant named herein to cure
5 the under-capitalization problems of DICK VOIGHT BUICK, INC. at any
6 time during the relevant period, identify each and every document
7 which refers thereto.

8 45. With regard to the wholesale finance line for DICK
9 VOIGHT BUICK, INC., set forth the wholesale finance line credit
10 limit of said wholesale finance line at all times during the
11 relevant period.

12 46. Was the wholesale finance line at MARINE MIDLAND
13 BANK for DICK VOIGHT BUICK, INC. ever increased or decreased during
14 the relevant period? If so, set forth the dates, times and
15 reasons for each such increase.

16 47. Identify each and every document which refers to
17 Interrogatory #46 and/or the answers thereto.

18 48. Set forth the date and time that the Defendant
19 MARINE MIDLAND BANK notified Plaintiffs that the Defendant MARINE
20 MIDLAND BANK was terminating and/or cancelling the wholesale fin-
21 ance line of DICK VOIGHT BUICK, INC.

22 49. Set forth each and every reason why the wholesale
23 finance line of DICK VOIGHT BUICK, INC. was terminated and/or
24 cancelled.

25 50. Identify each and every document which refers direct-
26 ly or indirectly to Interrogatories #48 and #49 and/or the answers
27 thereto.

28 51. Identify each and every agent, officer, employee and
representative of the Defendant MARINE MIDLAND BANK who made the

ROBERT F. WOOD, P.C. - ATTORNEY AT LAW - 800 POWERS BUILDING - ROCHESTER, N. Y. 14614

1 decision to terminate and/or cancel the wholesale finance line of
2 DICK VOIGHT BUICK, INC. and/or who participated in any manner
3 whatsoever in the decision to terminate the wholesale finance
4 line of DICK VOIGHT BUICK, INC.

5 52. Set forth the date and time that the decision to
6 cancel and/or terminate the wholesale finance line of DICK VOIGHT
7 BUICK, INC. was first made.

8 53. Identify each and every meeting, discussion or con-
9 versation and/or telephone conversation which took place during
10 the relevant period between the Defendant MARINE MIDLAND BANK
11 and/or agents, officers, employees and representatives of any of
12 the other named Defendants regarding the termination and/or
13 cancellation of the wholesale finance line of DICK VOIGHT BUICK,
14 INC.

15 54. At the time that the Defendant MARINE MIDLAND BANK
16 cancelled and/or terminated the wholesale finance line of DICK
17 VOIGHT BUICK, INC., explain in detail each and every reason why
18 the Defendant, EDWARD HIGGINS failed and/or refused to talk to
19 MARINE MIDLAND BANK regarding the cancellation and/or termination
20 of said wholesale finance line, especially at the time that the
21 Plaintiff specifically requested that the Defendant EDWARD HIGGINS
22 contact MARINE MIDLAND BANK.

23 55. At the time that DICK VOIGHT BUICK, INC. opened up
24 for business at 3800 Ridge Road West, Town of Greece and County
25 of Monroe, set forth the following information with regard to the
26 building and dealership facilities at DICK VOIGHT BUICK, INC.:

27 A. The fair market value of said real property,
28 building and dealership facilities as of that date.

1 B. The amount of the first mortgage on said real
2 property held by Defendant MARINE MIDLAND BANK.

3 56. Set forth the date and time that the Plaintiffs made
4 application to the Defendant MARINE MIDLAND BANK for a mortgage
5 commitment to remortgage in order to enable the Plaintiffs to buy-
6 out MOTORS HOLDING DIVISION'S preferred stock in said real property
7 building, and dealership facilities.

8 57. Set forth the date and time that the Defendant MARINE
9 MIDLAND BANK first gave a mortgage commitment to the Plaintiffs
10 with regard to said application to remortgage said real property,
11 building and dealership facilities referred to in Interrogatory
12 #56.

13 58. Identify each and every document which refers direct-
14 ly or indirectly to the prior Interrogatories #56 and #57 and/or
15 the answers thereto.

16 59. At the time that the Plaintiffs made application to
17 the Defendant MARINE MIDLAND BANK for a mortgage commitment to
18 remortgage said real property, building and dealership facilities
19 of DICK VOIGHT BUICK, INC., in an effort to buy out the preferred
20 stock held by MOTORS HOLDING DIVISION in said real property, did
21 the Defendant, EDWARD HIGGINS, verbally or in writing approve said
22 remortgaging and/or purchase by Plaintiffs of the preferred stock
23 of MOTORS HOLDING DIVISION?

24 60. At any time subsequent to the verbal or written
25 approval of the buy-out of MOTORS HOLDING DIVISION'S preferred
26 stock referred to in Interrogatory #59, did the said EDWARD
27 HIGGINS then verbally reject said buy-out by the Plaintiff? If
28 yes, set forth each and every reason why said buy-out was rejected

1 by the Defendant EDWARD HIGGINS.

2 61. Identify each and every meeting, discussion or
3 conversation and/or telephone conversation attended by and/or held
4 by and/or participated in by the Defendant EDWARD HIGGINS which
5 related to, directly or indirectly, the buy-out of MOTORS HOLDING
6 DIVISION'S stock by Plaintiffs.

7 62. Identify each and every document which refers direct-
8 ly or indirectly to Interrogatory #61, and/or the answer thereto.

9 63. Set forth the date and time that the Plaintiffs first
10 requested that the Defendant GENERAL MOTORS CORPORATION and/or the
11 BUICK MOTOR DIVISION locate and/or find a buyer for Plaintiffs'
12 dealership, dealership assets and/or franchise.

13 64. Identify each and every document which refers to
14 Interrogatory #63 and/or the answer thereto.

15 65. Identify each and every person and/or existing auto-
16 mobile dealer whom the Defendants sent to the Plaintiffs and/or
17 recommended to Plaintiffs as a potential buyer for Plaintiffs'
18 dealership and/or dealership assets during the relevant period.

19 66. Identify each and every person and/or automobile
20 dealer who contacted the Defendants GENERAL MOTORS and/or any
21 division thereof during the relevant period about purchasing and/or
22 coming the BUICK dealer at the dealership location of DICK VOIGHT
23 BUICK, INC.

24 67. Identify each and every document which refers dir-
25 ectly or indirectly to Interrogatories 65 & 66 and/or the answers thereto.

26 68. Identify each and every meeting, discussion or
27 conversation and/or telephone conversation which any of the De-
28 fendants above-named and/or their agents, officers, employees and

ROBERT F. WOOD, P.C. - ATTORNEY AT LAW - 800 POWERS BUILDING - ROCHESTER, N. Y. 14614

1 representatives had with the Small Business Administration during
2 the relevant period regarding the Plaintiffs.

3 69. Identify each and every document which refers
4 directly or indirectly to Interrogatory #68 and/or the answer
5 thereto.

6 70. Identify each and every agent of the small business
7 administration with whom the Defendants above-named or their
8 agents, officers, employees and representatives had contact
9 regarding the Plaintiffs at any time during the relevant period.

10 71. At the time that the Plaintiffs first began exper-
11 iencing financial difficulties at DICK VOIGHT BUICK, INC., set
12 forth each and every affirmative action plan and/or program which
13 the Defendant GENERAL MOTORS CORPORATION and/or any division
14 thereof recommended and/or implemented to help and assist the
15 Plaintiffs in curing said financial problems. If there were no
16 such affirmative action plans and/or programs, so state.

17 72. In calendar year 1974, set forth the number and date
18 of shipment of each 1975 model of BUICK Skyhawk which was shipped
19 and/or delivered to DICK VOIGHT BUICK, INC.

20 73. Identify each and every BUICK dealer who was con-
21 sidered a metropolitan BUICK dealer in metropolitan Rochester
22 during the relevant period.

23 74. Set forth number and dates of shipment and/or de-
24 livery of each 1975 BUICK Skyhawk delivered to each metropolitan
25 Rochester BUICK dealer identified in answer to Interrogatory #73.

26 75. Set forth the dates and times when the Defendant
27 GENERAL MOTORS CORPORATION and/or any division thereof first be-
28 came aware of the fact that Plaintiffs would have to or be requir-

1 to surrender their BUICK franchise.

2 76. Subsequent to the surrender of the BUICK franchise
3 by the Plaintiffs, did the Plaintiffs have a benefit of the parts
4 return and/or did the Defendant GENERAL MOTORS CORPORATION buy
5 back the parts and accessories of the Plaintiffs which they were
6 required to do pursuant to the BUICK franchise and/or sales agree-
7 ment? If not, explain in detail.

8 77. Identify WILLIAM ELSEER.

9 78. Identify each and every GENERAL MOTORS CORPORATION
10 dealership for whom WILLIAM ELSEER performed accounting and/or
11 auditing services.

12 79. Identify the persons who selected and/or hired
13 WILLIAM ELSEER to act as a Certified Public Accountant for DICK
14 VOIGHT BUICK, INC.

15 80. Identify each and every document which refers to
16 any and all business relationships between WILLIAM ELSEER and any
17 of the Defendants named herein.

18 81. At any time during the relevant period did the
19 Defendant MARINE MIDLAND BANK revoke and/or cancel any credit cards
20 of the Plaintiffs? If yes, set forth each and every credit card
21 so cancelled and the date of each cancellation and the reasons
22 therefor.

23 82. Identify each and every agent, officer, employee and
24 representative of Defendant MARINE MIDLAND BANK who participated
25 in any manner whatsoever in the decision to revoke Plaintiff
26 RICHARD VOIGHT'S business and/or personal credit cards.

27 83. Identify each and every document which refers to
28 Interrogatories 81 and 82 and/or the answers thereto.

1 84. At the time that Plaintiffs' new car wholesale
2 franchise line was increased by Defendants in 1973, identify the
3 agents, officers, employees and representatives of each Defendant
4 above named who made the decision to increase the wholesale
5 floor-plan line of DICK VOIGHT BUICK, INC.

6 85. Set forth each and every reason why said wholesale
7 floor-plan of Plaintiff DICK VOIGHT BUICK, INC. was increased on
8 each occasion that it was increased in 1973.

9 86. Set forth the dates of each such increase referred
10 to in Interrogatories 84 and 85 and/or the answers thereto.

11 87. Identify each and every document which refers to
12 Interrogatories 84, 85 and 86 and/or the answers thereto.

13 88. Identify each and every meeting, discussion or
14 conversation and/or telephone conversation which Defendant
15 MARINE MIDLAND BANK and its agents, officers, employees and
16 representatives had with Defendants GENERAL MOTORS CORPORATION
17 or their subsidiaries and their agents, officers, employees and
18 representatives regarding said wholesale floor-plan and
19 Interrogatories 84, 85 and 86 and/or the answers thereto.

20 89. At any time did any Defendant obtain the written or
21 verbal permission of Plaintiffs to increase the new car wholesale
22 finance of DICK VOIGHT BUICK, INC.? If so, identify each and
23 every document which refers thereto. If not, explain in detail.

24 90. Identify each and every document which Plaintiff
25 RICHARD VOIGHT signed at the organizational meeting of DICK
26 VOIGHT BUICK, INC.

27 91. Identify each and every person who attended the
28 organizational meeting of DICK VOIGHT BUICK, INC.

ROBERT F. WOOD, P.C. - ATTORNEY AT LAW - 800 POWERS BUILDING - ROCHESTER, N. Y. 14614

1 92. Identify said organizational meeting of DICK VOIGHT
2 BUICK, INC.

3 93. Set forth the number and class of shares of stock
4 which Plaintiffs surrendered at the time Plaintiffs surrendered
5 the franchise of DICK VOIGHT BUICK, INC. If none, explain.

6 94. At the time that Defendant GENERAL MOTORS CORPORATION
7 and its subsidiaries and/or agents, officers, employees and
8 representatives were looking for a site for the Buick dealership
9 in the Town of Greece, County of Monroe in 1966 - 1967, did
10 Defendants have more than one site that they were considering?
11 If "yes", set forth the following:

12 A. Location of each site (include address).

13 B. The reasons why Defendants selected 3800 Ridge
14 Road West.

15 C. Identify each and every document which refers to the
16 site selection.

17 95. Identify each agent, officer, employee and representa-
18 tive of Defendant GENERAL MOTORS CORPORATION or its subsidiaries
19 who prepared and/or recommended the plans for the construction
20 of the dealership facilities of DICK VOIGHT BUICK, INC.

21 96. At the time that Defendant GENERAL MOTORS CORPORATION
22 or its subsidiaries or their agents, officers, employees and repre-
23 sentatives selected 3800 Ridge Road West as the location for
24 DICK VOIGHT BUICK, INC., did Defendant GENERAL MOTORS CORPORATION
25 or its subsidiaries or their agents, officers, employees and
26 representatives consider that location as the best location in
27 that sales area for the dealership? Regardless of the answer,
28 explain in detail.

1 97. Identify the agents, officers, employees and repre-
2 sentatives of Defendant GENERAL MOTORS CORPORATION or its
3 subsidiaries who actually selected the dealership site location
4 for DICK VOIGHT BUICK, INC.

5 98. Identify each and every meeting, discussion or
6 conversation which Defendant GENERAL MOTORS CORPORATION or
7 its subsidiaries or their agents, officers, employees and repre-
8 sentatives had with Plaintiffs regarding said site location of
9 DICK VOIGHT BUICK, INC.

10 99. Set forth the date that Defendants GENERAL MOTORS
11 CORPORATION or their subsidiaries actually decided upon 3800
12 Ridge Road West as the dealership location for Plaintiffs.

13 100. Set forth the number of times and the dates thereof
14 that each Defendant reviewed the capitalization and/or working
15 capital of DICK VOIGHT BUICK, INC. during the relevant period.

16 101. Identify each agent, officer, employee and repre-
17 sentative of each Defendant who participated in any review refer-
18 to in Interrogatory 100 and/or the answer thereto.

19 102. Identify each and every document which refers to
20 Interrogatories 100 and 101 and/or the answers thereto.

21 103. Set forth the reasons for each such review
22 referred to in Interrogatories 100 and 101 and/or the answers ther-
23 to.

24 104. Identify each and every meeting, discussion or con-
25 sation and/or telephone conversation which Defendant MARINE MIDLAND
26 BANK and its agents, officers, employees and representatives had
27 with Defendant GENERAL MOTORS CORPORATION, its subsidiaries and
28 their agents, officers, employees and representatives regarding

ROBERT F. WOOD, P.C. - ATTORNEY AT LAW - 800 POWERS BUILDING - ROCHESTER, N. Y. 14614

1 the capitalization, working capital and/or the review thereof
2 referred to in Interrogatories 100 and 101 herein and/or the
3 answers thereto.

4 105. Identify each and every document which refers to
5 Interrogatories 103 and 104 herein and/or the answers thereto.

6 106. Identify each and every agent, officer, employee
7 and representative of Defendant MARINE MIDLAND BANK who parti-
8 cipated in any manner whatsoever in the decision to prepare and
9 send a letter dated March 26, 1976 addressed to Plaintiff
10 RICHARD VOIGHT, and signed by WILLIAM B. JOYCE, Assistant
11 Vice President, MARINE MIDLAND BANK.

12 107. Identify each and every agent, officer, employee
13 and representative of Defendant MARINE MIDLAND BANK who
14 participated in any manner whatsoever in the decision to pre-
15 pare and send a letter dated April 15, 1976 addressed to Plaintiff
16 RICHARD VOIGHT, and signed by JERRY VALDEZ, Midland Time Plan
17 Department, MARINE MIDLAND BANK.

18 108. Set forth the dates that Defendant MARINE MIDLAND
19 BANK commenced daily-floor plan checks at DICK VOIGHT BUICK, INC.

20 109. Set forth each and every reason why Defendant
21 MARINE MIDLAND BANK started doing daily floor-plan checks at
22 DICK VOIGHT BUICK, INC.

23 110. Set forth the length of time that Defendant
24 MARINE MIDLAND BANK performed daily floor-plan checks at DICK
25 VOIGHT BUICK, INC.

26 111. Identify each and every agent, officer, employee
27 and representative of Defendant MARINE MIDLAND BANK who made
28 the decision to perform daily floor-plan checks at DICK VOIGHT
BUICK, INC.

1 112. Identify each and every document that refers in any
2 manner whatsoever to Interrogatories 108-111 and/or the
3 answers thereto.

4 113. Set forth each and every reason why Defendant
5 GENERAL MOTORS CORPORATION and/or its subsidiaries, Defendant
6 HIGGINS and/or their agents, officers, employees and representa-
7 tives decided that they did not want Plaintiff RICHARD VOIGHT
8 as a Buick dealer.

9 114. Identify each and every meeting, discussion or
10 conversation and/or telephone conversation which Defendants
11 GENERAL MOTORS, their subsidiaries, HIGGINS or their agents,
12 officers, employees and representatives had with Defendant
13 MARINE MIDLAND BANK or their agents, officers, employees and
14 representatives regarding Interrogatory 113 and/or the answers
15 thereto.

16 115. Did the performance of Plaintiffs as a Buick
17 dealer meet with Defendants GENERAL MOTORS CORPORATION (including
18 their subsidiaries) standards and/or guides during each year
19 that Plaintiffs were a Buick dealer? If "no", set forth the
20 following:

- 21 A. Identify each category in which Plaintiffs did not
22 meet such standards.
23 B. Set forth each date on which said Defendants will
24 claim that Plaintiffs did not meet such standards.
25 C. Identify each and every document which refers to this
26 Interrogatory and/or the answer thereto.

27 116. Did Defendant GENERAL MOTORS CORPORATION or its
28 subsidiaries have, keep or maintain dealer trend sheets, dealer

ROBERT F. WOOD, P.C. - ATTORNEY AT LAW - 800 POWERS BUILDING - ROCHESTER, N. Y. 14614

1 comparison sheets or other documents which compared the Plaintiff
2 with all other Buick dealers in the Rochester metropolitan
3 market? If "yes", identify by popular name, form number or other
4 descriptive nomenclature said documents.

5 117. Set forth in detail each and every reason why
6 Defendant GENERAL MOTORS CORPORATION and/or its subsidiaries
7 or their agents, officers, employees and representatives told
8 third parties that Plaintiff RICHARD VOIGHT had been a "poor"
9 dealer and/or did not "measure up to GENERAL MOTORS' standards.

10 118. Identify each and every such "standard" referred
11 to by Mr. Donaldson of Defendant GENERAL MOTORS CORPORATION
12 in discussing Plaintiff RICHARD VOIGHT and to which reference is
13 made in Interrogatory 117.

14 119. Set forth each and every reason why Defendant
15 GENERAL MOTORS CORPORATION did not honor Plaintiffs' request for
16 a Parts Return which request was made in or about May, 1975.

17
18 DATED: April 23, 1976

19
20 *Robert F. Wood*

21 ROBERT F. WOOD, P.C.
22 Attorneys for Plaintiff
23 Suite 800, Powers Building
24 Rochester, New York 14614
25 716-454-4073
26
27
28

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF NEW YORK

3 RICHARD VOIGHT,
4 DICK VOIGHT BUICK, INC.,

Plaintiffs,

5 vs.

6 GENERAL MOTORS CORPORATION,
7 MOTORS HOLDING DIVISION, GENERAL MOTORS CORPORATION;
8 BUICK MOTOR DIVISION, GENERAL MOTORS CORPORATION;
9 GENERAL MOTORS ACCEPTANCE CORPORATION,
10 ARGONAUT DIVISION, GENERAL MOTORS CORPORATION;
11 MARINE MIDLAND BANK, WILLIAM MONRIAN, EDWARD HIGGINS,

Defendants.

12 NOTICE TO PRODUCE DOCUMENTS

13 Plaintiffs hereby request, pursuant to Rule 34 of the
14 Federal Rules of Civil Procedure, the Defendants produce and per-
15 mit Plaintiffs to inspect and to copy each of the following
16 documents:

17 1. The original and all copies, along with papers and
18 notations attached or clipped or referring thereto of all documents
19 identified by the Defendants in Paragraphs "6", "7", "8", "9",
20 "10", "11", "20", "22", "28", "31", "35", "44", "50", "58", "62",
21 "64", "67", "69", "74", "80", "83", "87", "89", "90", "94-C",
22 "102", "105", "112", "116" in the Interrogatories dated April
23 23, 1976 and served contemporaneously herewith.

24 2. Any and all floor-plan agreements, wholesale finance
25 agreements and any and all documents entered into between the
26 Plaintiffs and MARINE MIDLAND BANK.

27 3. Any and all contact reports of all agents, officers,
28 employees and representatives of all Defendants who called upon

1 or visited Plaintiff DICK VOIGHT BUICK, INC. during the calendar
2 years 1966 through 1976 inclusive.

3 4. Any and all inter-company or inter-organizational
4 reports or correspondence between any and all agents, officers,
5 employees and representatives of any of the defendants which
6 refer directly or indirectly to Plaintiff DICK VOIGHT BUICK, INC.

7 5. Any and all correspondence or other documents,
8 contact reports, correspondence, contracts, agreements, records,
9 tape recordings, stenographic notes, telephone call slips, notes
10 to telephone conversations, mag cards, telex files, teletype commun-
11 ications, reports, proposals, studies, summaries, minutes, notes,
12 agenda, bulletins, notices, announcements, instructions, charts,
13 manuals, brochures, schedules, price lists, telegrams and any
14 other documents which pertain to or relate to Plaintiff DICK
15 VOIGHT BUICK, INC. and which are in the possession of any of the
16 Defendants.

17 6. Any and all market surveys shown to the Plaintiffs.

18 7. Any and all correspondence and/or memoranda of
19 telephone conferences between any of the Defendants and the Small
20 Business Administration.

21 8. Any and all dealer comparison sheets of Buick dealers
22 in and for the metropolitan Rochester automobile market.

23 9. Any and all documents and/or copies thereof signed
24 by Plaintiff RICHARD VOIGHT at the organizational meeting of
25 DICK VOIGHT BUICK, INC.

26 10. Any and all loan committee meeting minutes of Defen-
27 dant MARINE MIDLAND BANK that pertain to Plaintiffs.

28 11. Any and all loan history sheets and/or other loan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD VOIGHT,
DICK VOIGHT BUICK, INC.,

Plaintiffs,

-vs-

GENERAL MOTORS CORPORATION,
MOTORS HOLDING DIVISION,
GENERAL MOTORS CORPORATION;
BUICK MOTOR DIVISION,
GENERAL MOTORS CORPORATION;
GENERAL MOTORS ACCEPTANCE CORPORATION,
ARGONAUT DIVISION,
GENERAL MOTORS CORPORATION;
MARINE MIDLAND BANK,
WILLIAM MONRIAN,
EDWARD HIGGINS,
HARRY FORNOROLA,

Defendants.

ORDER TO SHOW
CAUSE

Civil Action
No. 76-187

Upon all papers and proceedings herein and upon the annexed motion of defendants Marine Midland Bank, William Monrian and Harry Fornorola, and affidavit of Kenneth A. Payment, Esq., and sufficient cause having been shown therefor, it is

ORDERED that on July 12, 1976, at 10:00 A. M., or as soon thereafter as counsel can be heard, at the United States Courthouse, Rochester, New York, plaintiffs show cause why an order should not be made herein:

1. Dismissing the complaint and action and each and every claim therein as against the defendants, Marine Midland Bank, William Monrian and Harry Fornorola, on the grounds stated in the annexed motion to dismiss;

2. Staying all disclosure and/or depositions requested and/or demanded of the defendants, Marine Midland Bank, William Monrian and Harry Fornorola, during the pendency and determination of the motion by said defendants to dismiss the complaint; and it is further

Decision on
ORDERED that pending the ~~return and argument~~ of annexed motions, the defendants, Marine Midland Bank, William Monrian and Harry Fornorola, shall not be required to respond to any of plaintiffs' discovery demands, ~~and in no event shall such defendants be required to make such responses before August 9, 1976;~~ and it is further

ORDERED that service of this order to show cause with the annexed motion and affidavit shall be sufficient if made by mailing copies of these papers to plaintiffs' attorney, Robert F. Wood, P. C., 800 Powers Building, Rochester, New York 14614, and to Phillips, Lytle, Hitchcock, Blaine & Huber, attorneys for defendant, General Motors Corporation, at Suite 3400 - One Marine Midland Center, Buffalo, New York 14203, on or before June 28, 1976.

ORDERED that Answering Affidavits, if any, be served on prior to July 7, 1976.

Dated: Rochester, New York
June 22 1976

/s/ Harold P. Burke
U.S.D.J.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD VOIGHT,
DICK VOIGHT BUICK, INC.,

Plaintiffs,

-vs-

GENERAL MOTORS CORPORATION,
MOTORS HOLDING DIVISION,
GENERAL MOTORS CORPORATION;
BUICK MOTOR DIVISION,
GENERAL MOTORS CORPORATION;
GENERAL MOTORS ACCEPTANCE CORPORATION,
ARGONAUT DIVISION,
GENERAL MOTORS CORPORATION;
MARINE MIDLAND BANK,
WILLIAM MONRIAN,
EDWARD HIGGINS,
HARRY FORNOROLA,

Defendants.

:
:
:
:
: MOTION TO DISMISS
COMPLAIN. AND TO
STAY ALL
DISCLOSURE

: Civil Action
: No. 76-187

The defendants, Marine Midland Bank, William Monrian and Harry Fornorola, by their attorneys, Harter, Secrest & Emery, move the Court pursuant to the provisions of Rule 8(a)(2) and 12(b)(2)(6) of the Federal Rules of Civil Procedure for orders as follows:

I

MOTION TO DISMISS

1. Dismissing the complaint and action and each and every claim therein on the ground that the complaint fails to state any claim against these defendants upon which relief can be granted,
2. Dismissing the complaint and action and each and every claim therein on the ground that the Court lacks jurisdiction because it appears on the face of the complaint that none of the alleged claims arise under the Constitution, laws or treaties of the United States as are alleged therein,

3. Dismissing the complaint on the ground that it does not comply with the requirement of Rule 8(a)(2) that it "contain a short and plain statement of the claims showing that the pleader is entitled to relief".

II

MOTION TO STAY ALL DISCLOSURE PENDING
DETERMINATION OF MOTION TO DISMISS

4. Pursuant to Rules 6(b) and 26(c) staying all disclosure and/or depositions requested or demanded of the defendants, Marine Midland Bank, William Monrian and Harry Fornorola, during the pendency and determination of the motions by these defendants to dismiss the complaint and each and every claim therein, all on the grounds alleged in the annexed affidavit of Kenneth A. Payment sworn to the 22nd day of June, 1976,

5. Issuing an Order to Show Cause why the above relief should not be granted containing a stay of all disclosure and/or depositions by the defendants, Marine Midland Bank, William Monrian and Harry Fornorola, pending the return of this motion, and in no event prior to August 9, 1976.

HARTER, SECREST & EMERY

By Kenneth A. Payment /s/
Member of the Firm

Attorneys for Defendants, Marine
Midland Bank, William Monrian and
Harry Fornorola
Office and P. O. Address
700 Midtown Tower
Rochester, New York 14604
(716) 232-6500

TO: ROBERT F. WOOD, P.C.
Attorney for Plaintiff
Office and Post Office Address
800 Powers Building
Rochester, New York 14614

PHILLIPS, LYTLE, HITCHCOCK,
BLAINE & HUBER
Attorneys for Defendant, General
Motors Corporation
Office and Post Office Address
Suite 3400 - One Marine Midland Center
Buffalo, New York 14203

RICHARD VOIGHT,
DICK VOIGHT BUICK, INC.,

Plaintiffs,

-VS-

GENERAL MOTORS CORPORATION,
MOTORS HOLDING DIVISION,
GENERAL MOTORS CORPORATION;
BUICK MOTOR DIVISION,
GENERAL MOTORS CORPORATION;
GENERAL MOTORS ACCEPTANCE CORPORATION,
ARGONAUT DIVISION,
GENERAL MOTORS CORPORATION;
MARINE MIDLAND BANK,
WILLIAM MONKIAN,
EDWARD HIGGINS,
HARRY FORNOROLA,

Defendants.

Civil Action
No. 76-187

STATE OF NEW YORK)
COUNTY OF MONROE) SS.:

1. I am an attorney duly admitted to practise law in the State of New York and in the United States District Court for the Western District of New York, and am a member of Harter, Secrest & Emery, attorneys for Marine Midland Bank, William Monrian and Harry Fornorola, defendants herein.

2. I make this affidavit solely in connection with the Motion of said defendants to obtain a stay of all disclosure and depositions by them pending the determination of their Motion to Dismiss the Complaint and further in support of their request for a stay by Order to Show Cause pending the return of the defendants' Motion.

3. This action was commenced by the service of the Summons and a 52-page and 151-paragraph Complaint by service on the above defendants on April 29, 1976. Attached to the complaint was a 19-page 119-paragraph list of Interrogatories variously propounded to the defendants herein together with a Notice to Produce Documents requiring the defendants to produce business records covering a nine-year period of business relations between the plaintiffs and the defendant, Marine Midland Bank.

4. Upon Motion of these defendants, an Order was granted on May 18, 1976, extending the defendants' time to answer or otherwise move with respect to the Complaint, Interrogatories and Notice to Produce Documents until July 7, 1976.

5. Prior to the time when an answer was required of these defendants, a second wave of Interrogatories, a second Notice to Produce Documents and a Notice to Take Deposition Upon Oral Examination and Request for Production of Documents was served on these defendants. The Notice to Take Deposition Upon Oral Examination and Request for Production of Documents required the production of a great number of documents which for the most part this Court by its Order filed May 18, 1976, had previously ordered need not be produced prior to July 7, 1976.

6. Upon further Motion of these defendants, an Order was granted on June 1, 1976, extending the time within which the defendants might respond or otherwise move with respect to the second wave of disclosure until August 9, 1976.

7. On June 21, 1976, these defendants received a third wave of demands for disclosure by the plaintiffs consisting of a third set of Interrogatories and a third Notice to Produce Documents. The third set comes at a time when the action is less than two months old and the defendants' time to answer has not expired. To a large extent, the third set is apparently directed solely at the defendant, General Motors Corporation, but by virtue of the fact that both the Interrogatories and the Notice to Produce Documents are directed at all defendants, the defendants Marine Midland Bank, William Monrian and Harry Fornorola will be required to respond in some fashion to these voluminous demands.

8. The burdensome disclosure required by the plaintiffs' Notices and Demands is entirely premature in the face of a Motion to Dismiss the action which tests the very subject matter jurisdiction of this Court and which if granted, will entirely moot the reason for any disclosure. Quite apart from whether three waves of disclosure in such volume prior to the time when an answer is required is intended to harrass, it has had such an effect. Before these defendants are required to submit to the expenditure of time, personnel and money, the defendants should be able to test the sufficiency of the Complaint which in our opinion does not state any substantive federal claim.

9. Further, the second set of Interrogatories in particular, requires information of the defendants concerning other auto dealers with which the defendants have done business. The obvious impropriety of such disclosure to the plaintiffs in the event that the plaintiffs' action is dismissed is clear, and the defendants

should not be required to disclose prior to the resolution of their motion.

10. This action has not been pending so long that its orderly progression will cause undue delay.

11. For all of the above reasons and on behalf of the defendants, Marine Midland Bank, William Monrian and Harry Fornorola, I respectfully request that the Court grant an Order staying all disclosure and/or depositions requested or demanded of the defendants, Marine Midland Bank, William Monrian and Harry Fornorola, during the pendency and determination of the Motion by these defendants to Dismiss the Complaint and further issuing an Order as in the annexed Order to Show Cause staying all such disclosure pending the return date of this Motion.

/s/ Kenneth A. Payment
Kenneth A. Payment

Sworn to before me this
22nd day of June, 1976.

/s/ Carolyn G. Schweitz
Notary Public

CAROLYN G. SCHWEITZ, NOTARY PUBLIC
STATE OF N. Y., McNREE COUNTY
COMMISSION EXPIRES MARCH 30, 1978

ROBERT F. WOOD, P.C. ATTORNEY AT LAW - 800 POWERS BUILDING - ROCHESTER, N. Y. 14614

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 RICHARD VOIGHT,
4 DICK VOIGHT BUICK, INC.,

Plaintiffs,

5
6 -vs-

7 GENERAL MOTORS CORPORATION, MOTORS HOLDING
8 DIVISION, GENERAL MOTORS CORPORATION; BUICK
9 MOTOR DIVISION, GENERAL MOTORS CORPORATION;
10 GENERAL MOTORS ACCEPTANCE CORPORATION,
11 ARGONAUT DIVISION, GENERAL MOTORS CORPORATION;
12 MARINE MIDLAND BANK, WILLIAM MONRIAN,
13 EDWARD HIGGINS, HARRY FORNOROLA,

Defendants.

REPLY
AFFIDAVIT

Civil Action
No. 76-187

14 STATE OF NEW YORK)
15 COUNTY OF MONROE) SS:

16 JOHN R. FRIEDLANDER, ESQ., being duly sworn, deposes and
17 says:

18 1. I am an attorney duly admitted to practice law in the
19 State of New York and in the United States District Court for the
20 Western District of New York, and am a member of Robert F. Wood,
21 P.C., attorneys for the Plaintiffs, RICHARD VOIGHT and DICK VOIGHT
22 BUICK, INC.

23 2. I make this Affidavit in reply to Defendants', MARINE
24 MIDLAND BANK, WILLIAM MONRIAN and HARRY FORNOROLA, motion obtaining
25 a stay of all disclosure and depositions by them pending the
26 determination of their totally unsupported motion to dismiss the
27 Complaint.

28 3. Defendants' consolidated motion for dismissal of the
Complaint is obviously frivolous and made solely to delay discovery.
Defendants have not even bothered to raise a single allegation in
support of their motions for dismissal nor have they bothered to

1 submit any memorandum of law or points in support of their motions
2 to dismiss.

3 4. Said motions to dismiss violate the requirements of
4 the Federal Rules of Civil Procedure, Rule 7(b)(1) in that it
5 fails to "state with particularity the grounds (of the motion)".

6 5. Plaintiffs have absolutely no way to determine the
7 basis of the Defendants allegations that the Complaint fails to
8 state a cause of action upon which relief may be granted, on its
9 face, that the Complaint has no Federal cause of action relating to
10 Defendants, and that the Complaint should be subject to the drastic
11 relief of dismissal for failure to contain a short and plain
12 statement of the claim showing that Plaintiffs are entitled to
13 relief.

14 6. Obviously, the Complaint states many causes of action
15 upon which relief may be granted with classic allegations of
16 fraud, violations of antitrust laws and numerous other violations
17 of law.

18 7. Likewise, Counts X and XI on their face state that
19 Defendants violated the Federal antitrust laws. What possible way
20 do Plaintiffs have of determining the basis for Defendants statement
21 that on its face the Complaint has no Federal cause of action.
22 Obviously, such an assertion is frivolous and as stated before,
23 made only to delay and frustrate the hearing on the merits of this
24 lawsuit and the orderly process of discovery procedures.

25 8. Defendants make a motion to dismiss the Complaint
26 for failure to contain a short and plain statement of the claim
27 showing Plaintiffs are entitled to relief. Defendants have not
28 pointed out a single redundant or extraneous paragraph. In fact,

1 to obtain such a drastic remedy which flies in the face of the
2 entire spirit of the Federal Rules of Civil Procedure mandating
3 that niceties of procedural form be overlooked so that a hearing
4 can be held on the merits, Defendants must show that they cannot
5 possibly frame an answer to the Complaint as it stands and that
6 no reasonable efforts towards amending the Complaint can be made
7 which would allow them to frame an answer. See Wright & Miller,
8 Federal Practice and Procedure, Civil Section 1281. In fact,
9 these Defendants' Co-Defendant, GENERAL MOTORS CORPORATION, has
10 already filed an Answer and an Amended Answer to this Complaint.
11 Defendants motion can be nothing but frivolous and a waste of time.

12 9. In fact, a Vice President of Defendant, BUICK, told
13 a local Buick representative that:

14 A. Plaintiffs' Complaint was extremely well drawn.

15 B. Plaintiffs' lawyer really knew what he was doing.

16 10. Defendants' consolidated motion for dismissal of the
17 Complaint must be denied in all respects with prejudice as violating
18 Rule 7(b)(1). Plaintiffs are prejudiced by movants lack of
19 particularity. No one can comprehend the basis of Defendants'
20 motions or deal fairly with their motions. See Wright & Miller,
21 supra., Civil Section 1192 at 36-37.

22 11. The dismissal should be with prejudice because to
23 allow otherwise would be to totally frustrate the purpose of the
24 Rules Committee in requiring pre-answer motions to be consolidated
25 in one single pre-answer motion as set forth in Rule 12 of the
26 Federal Rules of Civil Procedure.

27 12. The remainder of Defendants' consolidated motion is
28 a request to delay discovery until a decision is entered on its

1 frivolous motions for dismissal of the Complaint.

2 13. To delay discovery and to frustrate a hearing on
3 the merits of this claim is obviously the entire purpose of
4 Defendants' consolidated motion. Since Defendants have not even
5 bothered to support in any manner their consolidated motion to
6 dismiss the Complaint, the Show Cause Order staying discovery
7 should be vacated. It is based solely on Defendants unsupported
8 consolidated motion to dismiss.

9 14. Defendants have abused the Federal Rules of Civil
10 Procedure in making the frivolous motions for dismissal and thereby
11 obtaining a Order to Show Cause ex parte delaying and frustrating
12 the process of discovery. It is obvious that Plaintiffs'
13 required answer to Defendants' frivolous motions is more in the
14 way of a motion under Rule 37 for an Order compelling discovery.
15 The sole achievement of Defendants' frivolous motion is the
16 delay of discovery and upon vacation of the stay of discovery,
17 Plaintiffs should be entitled to an award of the expenses of the
18 motion including reasonable attorneys' fees pursuant to Rule 37(a)
19 (4) of the Federal Rules of Civil Procedure.

20 15. Defendants' lack of good faith is further illustrated
21 by the manner in which they completed service of the ex parte
22 Order to Show Cause. See letter of Robert F. Wood, Esq., attached
23 hereto as EXHIBIT I.

24 WHEREFORE, Plaintiffs demand the following relief:

25 1. That Defendants' consolidated motion be dismissed
26 and all relief requested therein be denied with prejudice.

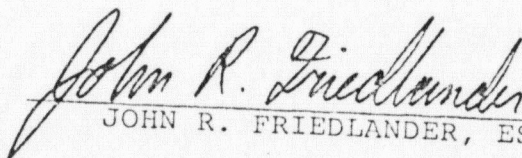
27 2. That Defendants be foreclosed from presenting any
28 oral argument or brief in support of its consolidated motion for

1 dismissal of the Complaint on the grounds that their lack of
2 particularity has prejudiced Plaintiffs in their opposition to
3 and/or presentation of oral argument on said motions.

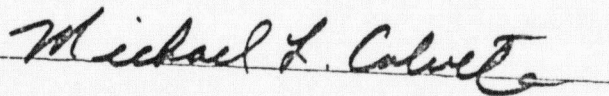
4 3. That the Order staying discovery be vacated and that
5 Defendants be required to answer Plaintiffs' discovery devices
6 forthwith but in no event later than five (5) days from the return
7 date of this motion.

8 4. That Plaintiffs be awarded costs on Defendants'
9 consolidated motion to dismiss.

10 5. That pursuant to Rule 37 of the Federal Rules of
11 Civil Procedure, Plaintiffs be granted costs of this motion
12 attempting to compel discovery including reasonable attorneys'
13 fees.

14
15 
16 JOHN R. FRIEDLANDER, ESQ.

17 Sworn to before me this
18 ~~7th~~ day of July, 1976.

19
20 

21 MICHAEL L. CALVETE
22 Notary Public in the State of New York
23 Monroe County N. Y., No. 4504034
24 Commissioner Expires March 30, 1977

LAW OFFICES OF
ROBERT F. WOOD, P. C.
SUITE 800, POWERS BUILDING
ROCHESTER, NEW YORK 14614

AREA CODE 718
487-4074

June 30, 1976

Kenneth A. Payment, Esq.
Harter, Secrest & Emery
700 Midtown Tower
Rochester, New York 14604

Re: Richard Voight, Dick Voight Buick, Inc. vs.
General Motors Corporation, Marine Midland Bank, et al
Civil Action No. 76-187

Dear Mr. Payment:

I received, by messenger, on June 28, 1976, the Order to Show Cause signed by Judge Burke on June 22, 1976, together with your covering letter dated June 25, 1976. What was the delay in serving us? I realize that the Order to Show Cause provided for service on or before June 28, 1976, but inasmuch as you had seen fit to include a decretal paragraph that answering affidavits, if any, be served prior to July 7, 1976, it would seem as though we should have had a little bit more notice.

As you well know, with the July 4th weekend coming up, you did not give us much opportunity to serve answering affidavits. Obviously, the "short service" was intentional on your part, and just another harassment tactic being employed by Marine Midland Bank and General Motors Corporation.

On two prior occasions, you have appeared before Judge Burke and obtained two (2) ex parte stays of discovery. It is obvious that you, on behalf of Marine Midland Bank, and attorney Cordes in Buffalo on behalf of General Motors Corporation have one "frame of mind" when it comes to dealing with plaintiffs and their attorneys, namely: to take any action necessary to deprive plaintiffs of their rights and to keep this case from ever being heard on the merits. Hopefully, the law will prevent and preclude such chicanery.

EXHIBIT I

Kenneth A. Payment, Esq.

-2-

June 30, 1976

Interestingly enough, your Affidavit in support of the Motion to dismiss the Complaint in the above-entitled action has absolutely no grounds set forth for the Motion, and it is obvious that the papers are not only defective on their face, but the Motion is a spurious Motion and an effort on your part to obtain additional Stays of discovery.

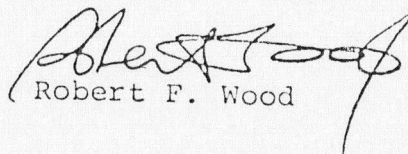
You indicate in your Affidavit that you have received "waves" of Interrogatories from the undersigned, but the reasons for the Interrogatories have never been set forth by you or attorney Cordes. The obvious reasons are that attorney Cordes continually serves the undersigned with pleadings, namely, an Answer and an Amended Answer, setting forth affirmative defenses and counterclaims which, of necessity, require Interrogatories on our part. I think that, in all fairness, you should at least acknowledge to the Court that the second and third sets of Interrogatories were, for the most part, addressed to the Answer and Amended Answer of the defendant, General Motors Corporation. Those Interrogatories require almost no action on the part of Marine Midland Bank or the defendants, Fornorola and Monrian, both of whom are officers of Marine Midland Bank.

As I indicated previously, sooner or later the above-entitled action will be litigated on the merits, and all of the "game playing" with Orders to Show Cause and Stays will "be out the window". In the meantime, I would appreciate some semblance of "fair play". My prior dealings with attorney Cordes have conditioned me not to expect fair play from him, but I was in hopes that since you and I are from the same "legal community" that you would have more courtesy. Obviously, I was wrong.

I assume that since you are making the within Motion to dismiss the plaintiffs' Complaint that you will submit a Memorandum of Law setting forth the bases of why you believe the Complaint should be dismissed. As I indicated, your Affidavit in support of the Motion does not contain any grounds. I don't believe that you would deny that the only purpose that you brought on the within Motion by Order to Show Cause was to obtain a Third Stay of discovery. I wonder what tactic you will utilize to obtain another Stay?!

Very truly yours,

ROBERT F. WOOD, P.C.


Robert F. Wood

RFW/pac

cc: Phillips, Lytle, Hitchcock
Blaine & Huber
The Honorable Harold P. Burke
Mr. Richard Voight

Kenneth A. Paymert, Esq.

-3-

June 30, 1976

P.S. Inasmuch as you are the moving parties in connection with this Motion to dismiss the plaintiffs' Complaint, we will request that the Court give us an opportunity to answer your Memorandum of Points and Authorities in support of your Motion at the time that oral argument is heard. In the event that you do not submit a Memorandum of Points and Authorities in support of your Motion, I assume that you will withdraw the Motion.

R.F.W.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD VOIGHT,
DICK VOIGHT BUICK, INC.,

Plaintiffs,

-vs-

GENERAL MOTORS CORPORATION, MOTORS
HOLDING DIVISION, GENERAL MOTORS
CORPORATION; BUICK MOTOR DIVISION,
GENERAL MOTORS CORPORATION; GENERAL
MOTORS ACCEPTANCE CORPORATION,
ARGONAUT DIVISION, GENERAL MOTORS
CORPORATION; MARINE MIDLAND BANK,
WILLIAM MONRIAN, EDWARD HIGGINS,
HARRY FORNOROLA,

Defendants.

REPLY
AFFIDAVIT

Civil Action
No. 76-187

STATE OF NEW YORK) SS.:
COUNTY OF MONROE)

KENNETH A. PAYMENT, being duly sworn, deposes and says:

1. I make this Affidavit in reply to the Affidavit of
John R. Friedlander, Esq., sworn to the 7th day of July, 1976.

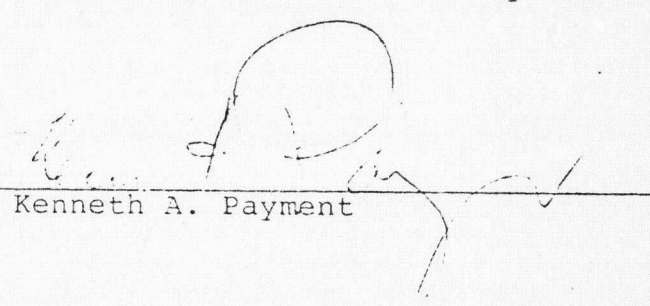
2. The form of motion to dismiss in this matter was
made in conformity with Official Form 19. As stated by 2A Moore's
Federal Practice, ¶7.05, P. 1543:

Reasonable specification is all that the
requirement of particularity imposes.
Official Form 19 is illustrative; and a
guide and standard for a motion to dismiss,
presenting defenses of failure to state a
claim, of lack of service of process, of
improper venue, and of lack of jurisdiction.
Paragraph 1, of that form, wherein the defendant
moves the court to dismiss the action, gives as
the only ground therefor that "the complaint
fails to state a claim against defendant upon
which relief can be granted." It can be seen
that this is equivalent to the common law general
demurrer.

3. Furthermore, no Affidavit is required or even appropriate on a motion under Federal Rule 12(b)(6). Koehring Company v. A. P. I. Incorporated, 369 F. Supp. 882 (1974).

4. In addition, and in conformity with local rule, a Brief supporting the Motion to Dismiss was filed with the District Court Clerk, delivered to the District Judge, and delivered to Robert F. Wood, P. C., on July 9, 1976.

5. For the above reasons, the plaintiffs' contention that the defendants' Motion is frivolously made is entirely without merit.


Kenneth A. Payment

Sworn to before me this
day of July, 1976.

Notary Public

CAROLYN O. SCHWEITZ, NOTARY PUBLIC
STATE OF N. Y., COUNTY
COMMISSION EXPIRES MARCH 30, 19__

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD VOIGHT and DICK VOIGHT
BUICK, INC.,

Plaintiffs

- VS -

CIVIL 76-187

GENERAL MOTORS CORPORATION, MOTORS
HOLDING DIVISION, GENERAL MOTORS
CORPORATION; BUICK MOTOR DIVISION,
GENERAL MOTORS CORPORATION; GENERAL
MOTORS ACCEPTANCE CORPORATION, ARGONAUT
DIVISION, GENERAL MOTORS CORPORATION;
MARINE MIDLAND BANK, WILLIAM MONRIAN,
EDWARD HIGGINS, HARRY FORNOROLA,

Defendants

Robert F. Wood
800 Powers Building
Rochester, N.Y. 14614
Attorney for plaintiffs

Phillips, Lytle, Hitchcock, Blaine & Huber
Suite 3400
One Marine Midland Center
Buffalo, N.Y. 14203
Attorneys for defendant General Motors Corporation

Harter, Secrest & Emery
700 Midtown Tower
Rochester, N.Y. 14604
Attorneys for defendants Marine Midland Bank,
Monrian, Fornorola and Higgins

The complaint herein was filed in April 1976
seeking total damages of eighty-five million dollars.
Jurisdiction of this court is claimed under the Sherman
Anti-Trust Act, Clayton Anti-Trust Act, the Securities Act
of 1933, the Securities and Exchange Act of 1934, and as to

General Motors, the Automobile Dealer Day in Court Act.

The counts of the complaint purporting to allege federal claims against the Marine defendants are Count 10 - Sherman Anti-Trust Act; Count 11 - Clayton Anti-Trust Act and Sherman Anti-Trust Act; Count 12 - Clayton Anti-Trust Act and Sherman Anti-Trust Act; Count 15 - Conspiracy to violate "federal laws enumerated herein"; Count 16 - Securities Act of 1933 and Securities and Exchange Act of 1934.

In 1967 the plaintiffs opened a Buick dealership in the Town of Greece, New York. The corporate plaintiff was the owner of the franchise from General Motors Corporation and of all the assets of the dealership. Richard Voight was part owner of the stock of Dick Voight Buick Inc. The complaint alleges that during most of the time between 1967 and 1975 the dealership successfully operated the franchise and made profits. The complaint alleges that at some point, apparently in 1975, General Motors Corporation terminated the franchise and plaintiff Richard Voight sold the stock in Dick Voight Buick, Inc., to General Motors Corporation. The complaint alleges that both plaintiffs entered into credit and other banking transactions with the defendant Marine Midland Bank for dealership purposes and for the personal use of the plaintiff, Richard Voight.

By motion with supporting papers filed July 23, 1976 the defendants Marine Midland Bank, William Monrian, Edward Higgins and Harry Fornorola move to dismiss the complaint as against the said defendants on three separately stated and numbered grounds. The motion has been submitted for determination on written memoranda.

No claim has been stated against the Marine defendants based on violations of the Clayton Anti-Trust Act. Counts 11 and 12 in so far as they allege violations of Sections 3 and 7 of the Clayton Anti-Trust act are dismissed with prejudice.

The complaint has not stated any claim for relief under the Sherman Anti-Trust Act. Counts 10, 11 and 12 purporting to allege violations of Sections 1 and 2 of the Sherman Anti-Trust Act are dismissed with prejudice.

Count 16 of the complaint contains claimed violations by all of the defendants of various sections of the Securities Act of 1933 and the Securities and Exchange Act of 1934. Count 16 of the complaint does not state any claim for relief and is dismissed with prejudice. The alleged claims based on Sections 77(e) and 77(1) are barred by the statute of limitations. Neither the stock in Dick Voight Buick, Inc., nor the General Motors franchise are securities within the meaning of the federal securities acts.

Count 15 alleging that the defendants "conspired to violate ---- federal laws enumerated herein, as well as other laws" does not state any independent federal claim and is dismissed with prejudice.

ALL OF THE ABOVE IS SO ORDERED.

The complaint in its entirety is dismissed with prejudice as against Marine Midland Bank, William Monrian, Edward Higgins and Harry Fornorola.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

December 14, 1976.

United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 76-187

RICHARD VOIGHT and DICK VOIGHT BUICK, INC.

vs.

GENERAL MOTORS CORPORATION, et al.

JUDGMENT

This action came on for ~~XXXX~~ (hearing) before the Court, Honorable Harold P. Burke, United States District Judge, presiding, and the issues having been duly ~~XXXX~~ (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the complaint in its entirety is dismissed with prejudice as against Marine Midland Bank, William Monrian, Edward Higgins and Harry Fornorola.

Dated at Buffalo, New York
of December , 19 76 .

, this 14th day

JOHN K. ADAMS

JOHN K. ADAMS
Clerk of Court

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD VOIGHT and DICK VOIGHT BUICK
INC.,

Plaintiffs

- vs -

CIVIL 76-187

GENERAL MOTORS CORPORATION, MOTORS
HOLDING DIVISION, GENERAL MOTORS
CORPORATION; BUICK MOTOR DIVISION,
GENERAL MOTORS CORPORATION; GENERAL
MOTORS ACCEPTANCE CORPORATION, ARGONAUT
DIVISION, GENERAL MOTORS CORPORATION;
MARINE MIDLAND BANK, WILLIAM MONRIAN,
EDWARD HIGGINS, HARRY FORNOROLA,

Defendants

Robert F. Wood
800 Powers Building
Rochester, N.Y. 14614
Attorney for plaintiffs

Phillips, Lytle, Hitchcock, Blaine & Huber
Suite 3400
One Marine Midland Center
Buffalo, N.Y. 14203
Attorneys for defendant General Motors Corporation

Harter, Secrest & Emery
700 Midtown Tower
Rochester, N.Y. 14604
Attorneys for defendants Marine Midland Bank,
Monrian and Fornorola

This court by decision and order dated December 14,
1976 dismissed the complaint in its entirety with prejudice
as against Marine Midland Bank, William Monrian and Harry
Fornorola.

I hereby determine under Rule 54(b), Federal Rules of Civil Procedure, that there is no reason for delay of appeal. I expressly direct the entry of judgment dismissing the complaint in its entirety as against Marine Midland Bank, William Monrian and Harry Fornorola.

IT IS HEREBY SO ORDERED.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

December 23, 1976.

December 23, 1976

John K. Adams
Clerk, U. S. District Court
604 U. S. Court House
Buffalo, New York 14202

Re: Richard Voight & 1 vs. General Motors Corp.,
et al. Civil 76-187

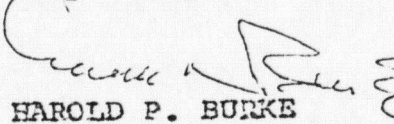
Dear Sir:

This letter refers to my order herein dated December 14, 1976. The purpose of this letter is to correct certain errors due to inadvertance.

This letter is your authority to delete on page 1 of the order the words "and Higgins" from the parties listed as represented by Harter, Secrest & Emery; to substitute on the first line on page 3 the date June 23, 1976 instead of the date July 23, 1976; to delete on line 3 of the first paragraph on page 3 the name "Edward Higgins"; to delete from the last line of the order on page 4 the name "Edward Higgins".

A copy of this letter is being sent to the respective attorneys, so that they can conform their copies of the December 14, 1976 order to reflect the changes made by this letter.

Very truly yours,


HAROLD P. BURKE
U. S. District Judge

cc: Robert F. Wood, Attorney at Law.
Phillips, Lytle, Hitchcock, Blaine & Huber, Attorneys at Law
✓ Harter, Secrest & Emery, Attorneys at Law

United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 76-187

RICHARD VOIGHT and DICK VOIGHT BUICK, INC.

vs.

GENERAL MOTORS CORPORATION, et al.

CORRECTED
JUDGMENT

This action came on for ~~XXXX~~(hearing) before the Court, Honorable Harold P. Burke
, United States District Judge, presiding, and the issues having been duly ~~XXXX~~
(heard) and a decision having been duly rendered.

It is Ordered and Adjudged that the complaint in its entirety is dismissed
with prejudice as against Marine Midland Bank, William Monrian, and
Harry Fornorola,

Dated at Buffalo, New York
of December , 1976 .

, this 27th day

JOHN K. ADAMS

JOHN K. ADAMS

Clerk of Court

101